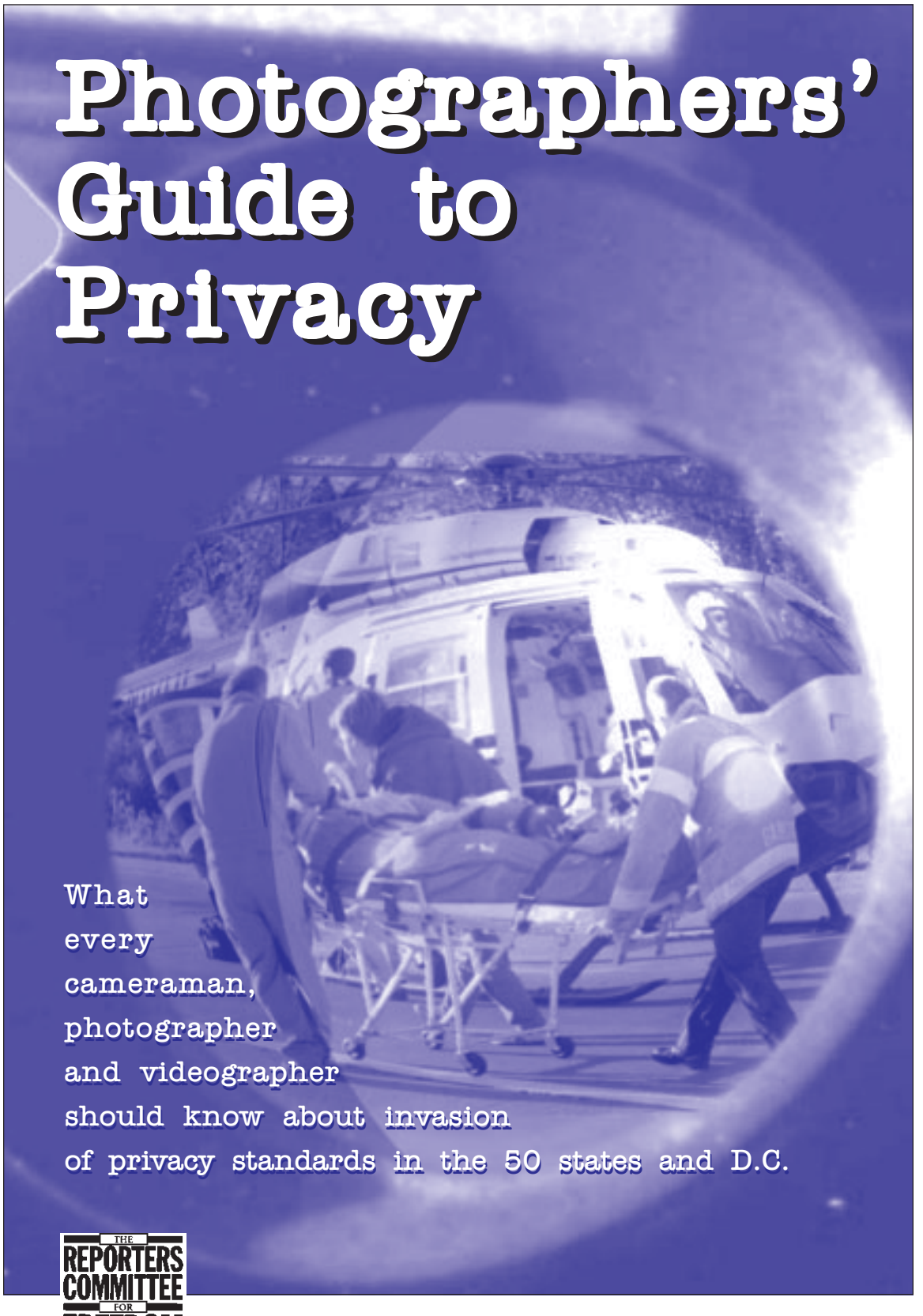
Photographers' Guide to Privacy



What every cameraman, photographer and videographer should know about invasion of privacy standards in the 50 states and D.C.

THE REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS

A primer on invasion of privacy

Celebrities, politicians and other sought-after sources of news would appear, by their routine claims that members of the media have violated their privacy, to understand precisely what is private and what is public, or newsworthy, information.

Journalists, however, often possess different notions of privacy and newsworthiness, and know that the question is more complicated. Reporting news stories in a way that serves and informs the public will often entail publicizing facts or displaying images that will embarrass or anger someone.

To make privacy matters even more difficult for journalists, courts constantly redefine what is private based upon interpretations of the elusive legal standard of a "reasonable expectation of privacy." For example, the California Supreme Court recently introduced into the equation the question of whether the claimed intruder is a member of the news media — thus allowing privacy claims based upon the fact that an individual expected not to be observed by a member of the news media, rather than the fact that the individual expected not to be observed in general. *See Sanders v. American Broadcasting Cos., Inc.*, 978 P.2d 67 (Cal. 1999).

The U.S. Supreme Court's scolding of the media in the 1999 "ride along" cases for a perceived inattention to the privacy rights of the people featured in the news most likely reflects the current attitude of many judges and lawmakers and, thus, underscores the importance for journalists to be aware of general privacy principles.

In the context of determining that law enforcement officers who permit the news media to accompany them across the threshold of a home while serving a search warrant violate the Fourth Amendment's prohibitions against unreasonable searches and seizures, the Supreme Court expressed disdain for the media's arguments in favor of access to information related to the execution of warrants, but alleged by the subjects of those warrants to be private.

Writing for the Court, Chief Justice William Rehnquist said that the presence of the news media did not further the objectives of an authorized intrusion by law enforcement officers into a home to execute a search or arrest warrant. The ostensible benefits of media presence — accurately informing the public about law enforcement efforts to control crime, minimizing police abuses, and protecting officers from violence by the subjects of searches and arrests by recording those events — were outweighed by the privacy interest of homeowners.

The assertion that media presence during the execution of a search warrant can serve a legitimate law enforcement purpose "ignores the importance of the right of residential privacy at the core of the Fourth Amendment," the Court held.

The California Supreme Court has taken a similar position on media presence and privacy and in two cases decided in 1998 and 1999, allowed the subjects of broadcast news pieces to hinge the parameters of their expected privacy on the nuances and gradations of their surroundings.

In June 1998, California's highest court concluded that two people injured in a car accident could sue for invasion of privacy based on the fact that a cameraman recorded emergency aid given in a rescue helicopter. The accident victims, the court held, could claim a reasonable expectation of privacy in the rescue helicopter, even if they did not expect their conversations in the helicopter would not be overheard and could not claim a right to privacy at the accident scene prior to being moved to the helicopter. *See Shulman v. Group W Productions*, 955 P.2d 469 (Cal. 1998).

A year later, the California Supreme Court held that even an employee who knows a conversation in an open office space will be overheard by coworkers can pursue an invasion of privacy claim if that conversation is recorded by a reporter's hidden camera. The case involved "telepsychic" hotline workers who were secretly videotaped by an undercover reporter, and writing for the court, Justice Kathryn Mickle Werdegar rejected the notion of privacy as an "all-or-nothing" concept and described an "expectation of limited privacy."

"There are degrees and nuances to societal recognition of our expectations of privacy: the fact the privacy one expects in a given setting is not complete or absolute does not render the expectation unreasonable as a matter of law," she wrote.

The court noted its ruling was not meant to imply "that investigative journalists necessarily commit a tort by secretly recording events and conversations in offices, stores, or other workplaces." However, the court's ruling allows the "identity of the claimed intruder and the means of intrusion" to determine whether the subjective expectation of privacy was reasonable. *See Sanders v. American Broadcasting Cos., Inc.*, 978 P.2d 67 (Cal. 1999).

The combination of a lack of recognition for the benefits of undercover investigative journalism and an acceptance of gradations of privacy in offices and stores open to the public by appellate courts of last resort such as the U.S. Supreme Court and the California Supreme Court puts journalists with no knowledge of privacy law in a dangerous position.

Under different circumstances, however, courts find the news media are justified in doing what their subjects may feel is invasive. For example, in May 1998, the U.S. Supreme Court decided not to review the decision of a split federal court of appeals in Pasadena (9th Cir.) that a flight attendant could not sue ABC for surreptitiously videotaping her from across the street as she stood at her doorstep and spoke to an ABC producer. The flight attendant had been on the flight that O.J. Simpson took on the night of his ex-wife's murder, and she voluntarily spoke with a producer who identified himself as a member of the news media on her doorstep, but declined an on-camera interview.

The flight attendant could not claim an invasion of her privacy occurred, however, because she knowingly spoke to a member of the media about a newsworthy topic and was filmed in public view from a public place. In rejecting her claim, the majority of the federal appellate court in Pasadena noted that the producer "did not enter her home. There was no evidence that any intimate details of anyone's life were recorded."

The pursuit and publication of images can expose journalists to crushing financial liability if a court determines that the news organization has invaded a person's priva-

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cy. The invasion of another's privacy is a "tort," meaning a civil wrong against another that results in injury.

A privacy tort occurs when a person or entity breaches the duty to leave another person alone. When journalists intrude on a person's privacy and cause emotional or monetary injury, they may be forced to pay damages.[1]

Each state has developed its own privacy law, either through the common law, statutes, or both. The right to privacy is an evolving branch of the law, and in most jurisdictions many legal questions remain unsettled.[2]

The First Amendment places some limits on the application of privacy law to the media. It does not, however, immunize the media completely. To avoid lawsuits, journalists must know how the law in their jurisdiction balances the competing interests of the press and the public against the privacy interests of the subjects of reports.

Courts have recognized four major branches of privacy law: 1) unreasonable intrusion upon seclusion; 2) unreasonable revelation of private facts; 3) unreasonably placing another person in a false light before the public; and 4) misappropriation of a person's name or likeness.

The facts of a particular case may implicate more than one branch of privacy law. Some states refuse to recognize one or more of the four torts; other states replace or supplement the common law with statutory privacy rights.[3]

This guide provides a general explanation of each privacy tort and related causes of action. The state case law section summarizes privacy cases involving photography from federal and state courts throughout the country.

Although photography poses some unique problems in privacy law, in general the legal analysis for invasion of privacy through images parallels the analysis for invasions through words. A complete examination of the privacy law in every jurisdiction is beyond the scope of this guide. However, the introduction to each state summary notes which of the four privacy torts have been recognized in any context by the state.

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Intrusion

> One who intentionally intrudes, physically or otherwise, upon the solitude or seclusion of another or his private affairs or concerns, is subject to liability to the other for invasion of privacy, if the intrusion would be highly offensive to a reasonable person.
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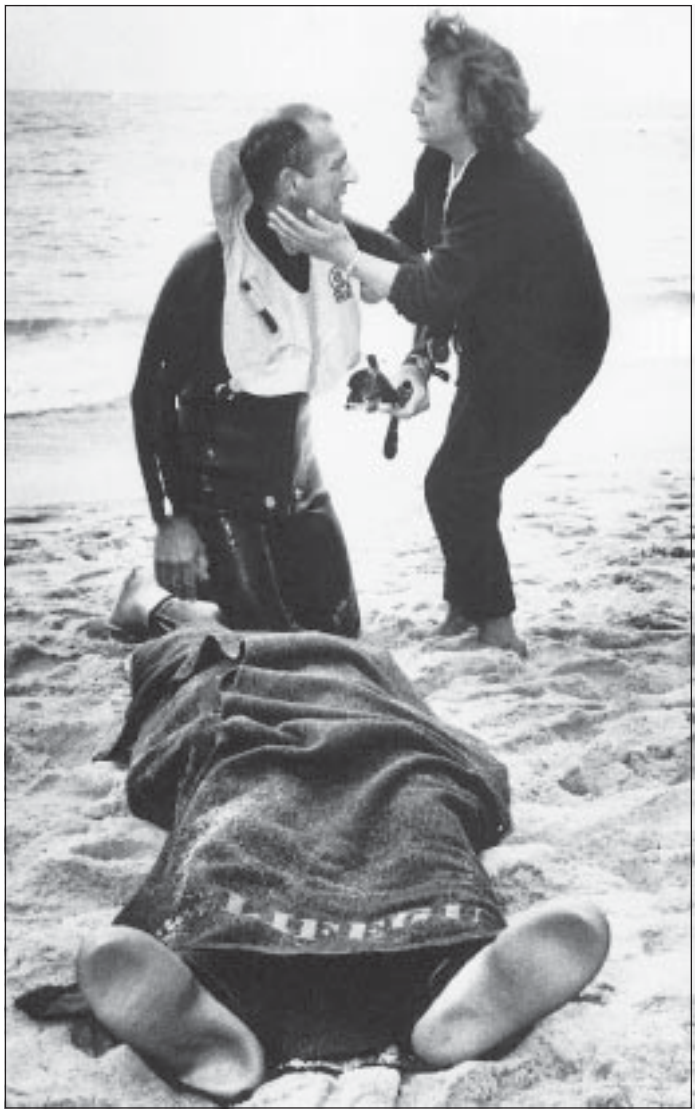
> *Restatement (Second) of Torts, § 652B.*



Photos of people in grief raise invasion of privacy questions.

Journalists run afoul of this tort through the process of gathering information. The subsequent publication of the information is not required.

Actions that may violate this privacy right include trespass onto private property, hidden surveillance, and the fraudulent entry into private areas.

Conduct that invades privacy may also violate the criminal law. In general, courts have held that journalists must obey generally applicable laws. *See, e.g., Cohen v. Cowles Media Co.*, 111 S.Ct. 2513 (1991) (newspaper not immune from liability to source after paper broke confidentiality agreement); *City of Oak Creek v. Ah King*, 436 N.W.2d 285 (Wis. 1989) (photographer has no First Amendment right of access to crash scene from which the public has been excluded); *Stahl v. Oklahoma*, 665 P.2d 839 (Okla. Crim. App. 1983) (journalists who accompanied nuclear power plant protestors guilty of criminal trespass).

Trespass is the illegal entry onto private property. If the owner or person in charge of private property orders a photographer to leave, the photographer should leave or be prepared to face a trespass charge. Photographers who accompany police onto private property are not necessarily immune from liability.

Twelve states have statutes that ban the surreptitious use of cameras in private places. *See box on page 4.* The statutes are described in the general law category of the state-by-state privacy law summary.

Camera operators should also be aware of federal and state laws that govern the taping of oral communications. The federal wiretap statute prohibits the interception of oral communications unless one party — such as the journalist — consents to the recording. 18 U.S.C. §§ 2510-2520. Some states go further, and bar the taping of oral communications unless *all* parties consent to the taping. *See box on page 5.* The all-party consent statutes are also noted in the general law category of the state summary.

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Private Facts

> One who gives publicity to a matter concerning the private life of another is subject to liability to the other for invasion of privacy, if the matter is of a kind that:
>
> (a) would be highly offensive to a reasonable person and
>
> (b) is not of legitimate concern to the public.
>
> *Restatement (Second) of Torts*, § 652D.

The private facts tort presents the disturbing scenario in which journalists may be liable for money damages for reporting the truth. The U.S. Supreme Court noted that in this particular privacy tort, "claims of privacy most directly confront the con-

stitutional freedoms of speech and press." *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469 (1975).

In several cases the Supreme Court has held that "where a newspaper publishes truthful information which it has lawfully obtained, punishment may lawfully be imposed, if at all, only when narrowly tailored to a state interest of the highest order." *Florida Star v. B.J.F.*, 491 U.S. 524, 541 (1989).

Although the Supreme Court has prevented states from punishing journalists who published legally obtained names of juvenile offenders and rape victims, the Court has not absolutely rejected the private facts tort in this context. Although crimes such as rape are newsworthy — and newsworthiness is a defense to a private facts suit — not all courts have agreed that the identity of a rape victim is newsworthy.

Absent special circumstances involving crime victims and witnesses, photographs of virtually anything visible in a public place do not give rise to actions for publication of private facts.

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False Light

> One who gives publicity to a matter concerning another that places the other before the public in a false light is subject to liability to the other for invasion of his privacy, if:
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> (a) the false light in which the other was placed would be highly offensive to a reasonable person, and
>
> (b) the actor had knowledge of or acted in reckless disregard as to the falsity of the publicized matter and the false light in which the other would be placed.
>
> *Restatement (Second) of Torts*, § 652E.

A photograph or videotape by itself will rarely place a subject in a false light. Rather, the accompanying text, caption, or voice-over could be misleading and portray the person in a false context. However, an accurate depiction of a person in a publication the person finds offensive does not, in itself, state a false light claim.

The U.S. Supreme Court ruled in *Time, Inc. v. Hill*, 385 U.S. 374, 387-88 (1967), concerning a photo essay about a fictionalized play based on a real-life hostage drama, that the First Amendment bars recovery for "false reports of matters of public interest in the absence of proof that the defendant published the report with knowledge of falsity or in reckless disregard of the truth."

Subsequent Supreme Court decisions, however, left open the possibility that in cases involving private persons rather than public figures, states could permit false light recovery if plaintiffs merely proved negligence.

Although the facts that give rise to a false light claim may also support a defamation claim, injury to reputation is not required for a false light claim. The false light tort aims primarily to protect against emotional distress rather than to protect one's reputation. First Amendment concerns, and the similarity between the claims, have persuaded some states not to recognize the false light tort.

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Misappropriation

> One who appropriates to his own use or benefit the name or likeness of another is subject to liability to the other for invasion of privacy.
>
> *Restatement (Second) of Torts*, § 652C

States often have detailed statutes that govern the right of publicity. These laws have two purposes: 1) to protect ordinary individuals from the mental anguish that may accompany the undesired commercial use of their name or image, and 2) to protect the property interest that celebrities develop in their identities.

Under these laws the use of a relevant

9 Keys to Avoiding Invasion of Privacy Suits

The best hedge against invasion of privacy suits is knowledge of the law in the jurisdiction in which the photograph or videotape is shot and published or broadcast. However, the line between journalism that is protected by the First Amendment and state law, and journalism that creates liability for invasion of privacy, is rarely clear.

Before taking or publishing a questionable picture, a photojournalist might want to consider several factors:

➢ Generally, what can be seen from public view can be photographed without legal repercussions. Photographs taken in private places require consent.

➢ Even if people are photographed in public, beware of the context in which the picture is placed (such as an innocuous photo of recognizable teen-agers in a story about the rise of teen violence). Use caution when utilizing file footage or photographs to illustrate negative stories. Special effects can be used to render the subjects unidentifiable.

➢ If consent is required, it must be obtained from someone who can validly give it. For example, permission from a child or mentally handicapped person may not be valid, and a tenant may not be authorized to permit photographs of parts of the building not rented by the tenant.

➢ Consent to enter a home may not be consent to photograph it. Consent exceeded can be the same as no consent at all.

➢ Although oral consent may protect the press from liability for invasion of privacy, written consent is more likely to foreclose the possibility of a lawsuit. However, a subject's subsequent withdrawal of consent does not bar the publication of the photograph. It simply means that the journalist may not assert consent as a defense if the subject later files suit. In some states the commercial use of a photograph requires prior written consent.

➢ Permission from a police department to accompany officers who legally enter private property may not immunize journalists from invasion of privacy suits. In most states, authorities may deny photographers access to crime scenes and disaster areas.

➢ Public officials and public figures, and people who become involved in events of public interest, have less right to privacy than do private persons.

➢ In some states, using hidden cameras, or audiotaping people without their consent, may invite criminal or civil penalties.

➢ A photograph may intrude into a person's seclusion without being published. Intrusion can occur as soon as the image is taken.

Privacy laws vary widely from state to state, and the law often is unclear within a given state. If in doubt about a situation, a call to a media lawyer or to the Reporters Committee may help you assess the risk.

picture to illustrate a newsworthy article will generally not lead to liability. The unauthorized use of a celebrity's picture in an advertisement often will.[4]

However, the Supreme Court ruled that newsworthiness is not necessarily a defense to a misappropriation claim. In *Zacchini v. Scripps-Howard Broadcasting Co*, 433 U.S 562 (1977), the court ruled that a news broadcast showing the entire 15-second act of a "human cannonball" violated his right to publicity.

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Defenses To Privacy Suits

Several defenses are available to photographers and news organizations accused of invasion of privacy.

If the subject of the photograph has no reasonable expectation of privacy, then no invasion of privacy is possible. Photographs taken in public places generally are not actionable. Photos of crimes, arrests and accidents usually are considered newsworthy and immune from privacy claims.

Public figures, who voluntarily expose themselves to scrutiny, waive much of their right to privacy.

Corporations generally cannot claim a right to privacy; unlike the defamation tort, the right to privacy concerns the personal "right to be left alone" rather than reputation. Heirs cannot file suit on behalf of deceased people, although some states make exceptions for misappropriation claims.

If a subject does have a reasonable expectation of privacy, consent to have photographs taken and published is a defense to an invasion of privacy action.

In deciding whether to take and publish a questionable photograph, journalists must consider many factors. The following pages survey the privacy law of the 50 states and the District of Columbia, with emphasis on cases involving photography. In many states the courts have not addressed or resolved questions about the scope of privacy law. Many cases turn on subtle distinctions of fact, and could be decided either way. When in doubt, you should consult an attorney or call the Reporters Committee's toll-free legal assistance hotline: 1-800-336-4243.

End Notes

1 Even if a news organization arguably violates a subject's right to privacy, the subject's remedy usually will not include the ability to bar the publication of the picture. *See CBS, Inc. v. Davis*, 114 S.Ct. 912 (Blackmun, Circuit Justice 1994) (granting relief from injunction barring broadcast of surreptitious videotape of beef processing plant because of presumptive invalidity of prior restraints)

2 People also have a constitutional right to privacy that protects against invasions by the government. Journalists who act jointly with government officials could violate a person's constitutional privacy right. *See, e.g., Ayeni v. CBS Inc.*, 848 F.Supp. 362 (E.D.N.Y. 1994)

3 Journalists' conduct also may lead to other tort claims, such as trespass or the intentional infliction of emotional distress.

4 Because the use of a celebrity's likeness in advertising may imply endorsement, a celebrity whose likeness is used without consent may also have a claim under the federal Lanham Act, 15 U.S.C. § 1125(a), which prohibits false descriptions of products or their origins.

State-by-State Guide to Privacy Law

The following is a state-by-state listing of cases concerning invasion of privacy by journalists. Where our research did not locate cases concerning a specific type of invasion of privacy, that type of invasion of privacy is not addressed.

ALABAMA

Intrusion: A group of men who were photographed while sitting in public at a greyhound race were not intruded upon because they were not secluded, and the photograph taken of them was not highly offensive. Moreover, the men consented to being photographed by not objecting or moving when the photographer appeared and began taking pictures. *Schifano v. Greene County Greyhound Park, Inc.*, 624 So.2d 178 (Ala. 1993).

Private facts: The right of privacy has been characterized as personal to an individual, and consequently, the family of a deceased woman whose photograph illustrated an article on cancer care could not sue for invasion of privacy. The publication of the photograph also was not outrageous enough to support an intentional infliction of emotional distress claim. *Fitch v. Voit*, 624 So.2d 542 (Ala. 1993).

The mother of a deceased parolee could not sue for publication of private facts when photographs of her son were published because her son was a public figure. *Abernathy v. Thornton*, 83 So.2d 235 (Ala. 1955).

False light: A photograph used for advertising that included men at a greyhound track merely depicted a normal scene and, thus, was not offensive. In addition, the men implicitly consented to the taking of the photograph by not objecting to the photographer's presence when the pictures were taken. *Schifano v. Greene County Greyhound Park, Inc.*, 624 So.2d 178 (Ala. 1993).

Even though a news photograph of a woman at a "funhouse" with her skirt blown up was taken in a public place in public view, an invasion of privacy occurred because the woman involuntarily placed herself in a position that an ordinary person would find embarrassing. *Daily-Times Democrat v. Graham*, 162 So.2d 474 (Ala. 1964).

Misappropriation: No unique quality or value was found in the likenesses of a group of unidentified men pictured in a racetrack advertising photograph, and the men implicitly consented to being photographed by not objecting. *Schifano v. Greene County Greyhound Park, Inc.*, 624 So.2d 178 (Ala. 1993).

ALASKA

The Alaska Supreme Court has recognized the intrusion tort, but only in a nonbinding part of an opinion. A federal court recognized a false light claim.

Misappropriation: A North Pole expedition paid for by a news service was a matter of public interest that photographers not employed by that news service had a right to record. *Smith v. Suratt*, 7 Alaska 416 (D. Alaska 1926).

ARIZONA

Arizona has recognized the four privacy torts.

Intrusion: An undercover television news crew gained access to a medical laboratory by posing as potential business associates and secretly videotaped their meetings with a doctor. The doctor's intrusion claim failed because he could not have had a reasonable expectation of privacy in an office open to the public, nor could he reasonably expect to keep private a conversation with strangers about the medical testing industry. In addition, the television crew did not act in a manner that would have been highly offensive to a reasonable person because they did not put anyone in danger, did not invade the doctor's home, and were pursuing a story about a matter of public health. *Medical Laboratory Management Consultants v. American Broadcasting Cos., Inc.*, 30 F. Supp. 2d 1182 (D. Ariz. 1998).

False light: A newspaper article linking a man to the deaths of two young boys did not place him in a false light when it accurately named him as a murder suspect. The fact that others might conclude — perhaps

inaccurately — from reading the article that the man actually killed the children does not alter the truth of the statement that he was a suspect in a homicide investigation. *Meador v. New Times, Inc.*, 36 F.3d 1103 (9th Cir. 1994).

ARKANSAS

The Arkansas Supreme Court has recognized intrusion, false light, and misappropriation. There is little Supreme Court case law analyzing the private facts tort, but it appears as though that cause of action would be recognized as well.

Intrusion: A federal trial court has upheld a subpoena seeking a television station's outtakes in a privacy suit, implying that a woman whose surgery was filmed without her consent had grounds to sue for invasion of privacy. *Williams v. American Broadcasting Co.*, 96 F.R.D. 658 (W.D. Ark. 1983).

False light: Publishing a photograph of an elderly woman was actionable when the photograph was used to illustrate a story that falsely stated she quit her job as a newspaper carrier because an affair had left her pregnant. *Peoples Bank & Trust Co. v. Globe Int'l Publishing Inc.*, 978 F.2d 1065 (8th Cir. 1992), *cert. denied*, 114 S.Ct. 343 (1993).

CALIFORNIA

California recognizes the four privacy torts, and has a misappropriation statute. Cal. Civ. Code §§ 990, 3344. California also has a law that creates civil liability for news photographers who trespass and invade a person's privacy with "malicious" intent. The law provides for tripling a jury's damages award and allows punitive damages. Cal. Civ. Code § 1708.8.

Intrusion: A television network secretly videotaped a news producer's conversation with a potential source as the two stood at the source's doorstep and later aired a five-second excerpt of the videotape, even though the source declined an on-camera interview. There was no physical intrusion into the source's privacy because she was in full public view from the street while speaking with the producer, and the network filmed her from a public place across the street. In addition, the source spoke freely with the producer and must have known the contents of the conversation might be repeated, and the network never revealed her name or address. *Deteresa v. American Broadcasting Cos., Inc*, 121 F.3d 460 (9th Cir. 1997).

Two people injured in a car accident could sue for intrusion based on the fact that a cameraman recorded emergency care given in a rescue helicopter, regardless of the fact that the accident victims expected their conversations with rescue workers in the helicopter to be overheard by others and the fact that they could not claim a right of privacy at the accident scene prior to being moved to the helicopter. *Shulman v. Group W Productions*, 955 P.2d 469 (Cal. 1998).

An undercover reporter who obtained a job as a "telepsychic" and secretly videotaped conversations with her coworkers might have intruded upon a coworker's seclusion because the coworker's expectation that his conversations might be overheard in the office did not prevent an expectation that the conversations were not being recorded by a reporter. *Sanders v. American Broadcasting Cos., Inc.*, 978 P.2d 67 (Cal. 1999).

Secretly photographing Joan Collins, a celebrity and public figure, while she was on her private property, along with the publication of the photographs, did not constitute a violation of federal racketeering laws. *Globe Int'l Inc. v. Superior Court*, 12 Cal. Rptr. 2d 109 (Cal. Ct. App. 1992).

A television news broadcast about a judge who was given the lowest rating possible in a poll of attorneys included footage of him leaving his home. The judge's intrusion claim failed because he was in public view when the footage was filmed, and because the news crew did not enter his property, contact him physically, endanger his safety, or disclose where he lived. *Aisenson v. American Broadcasting Co.*, 269 Cal. Rptr. 379 (Cal. Ct. App. 1990).

The wife of a heart attack victim had valid claims for trespass and intrusion against a television news crew that entered her home without her consent to videotape unsuccessful attempts by paramedics to save her husband's life. *Miller v. National Broadcasting Co.*, 232 Cal. Rptr. 668 (Cal. Ct. App. 1986).

The surreptitious recording and photographing of a "quack" doctor, who was later convicted of unauthorized practice of medicine, may constitute an intrusion. Subsequent publication of the photos in *Life* magazine was not essential to the intrusion upon seclusion claim, but was admissible to establish damages. *Dietemann v. Time Inc.*, 449 F.2d 245 (9th Cir. 1971).

A domestic violence victim who allowed a television news crew to come into her home could not claim trespass or intrusion. It was irrelevant to her trespass and intrusion claims that she asserted her consent to the media's presence was obtained through fraud. A possible claim based solely on fraud or intentional misrepresentation did exist, however. *Baugh v. CBS Inc.*, 828 F. Supp. 745 (N.D. Cal. 1993).

Private facts: The publication of a photo of revelers at a public "Exotic Erotic Ball" was protected because the activities were observable by thousands of strangers. *Martin v. Penthouse*, 12 Med. L. Rptr. 2058 (Cal. Ct. App. 1986).

A domestic violence victim who was filmed in her home by a television news crew could sue for disclosure of private facts because the facts broadcast as a result of the news crew's presence went beyond the information available in a police report. Also, the broadcast may have been degrading, and the victim's involvement in the domestic violence incident might not have been newsworthy. *Baugh v. CBS Inc.*, 828 F. Supp. 745 (N.D. Cal. 1993).

Broadcasting footage of rescue workers helping two car accident victims in an emergency helicopter did not create liability for publication of private facts because the rescue efforts were newsworthy. *Shulman v. Group W Productions*, 955 P.2d 469 (Cal. 1998).

False light: A photograph of an actress and a producer leaving a restaurant together, accompanied by an article stating that they were dating — when, in fact, the producer's wife was present at the time the photograph was taken — might constitute false light invasion of privacy. *Fellows v. National Enquirer*, 721 P.2d 97 (Cal. 1986).

A photograph of a married couple in an affectionate pose, taken without their knowledge or permission, that was used to illustrate an article that said love at first sight was founded upon sexual attraction alone and would be followed by divorce was sufficient to establish a false light claim. *Gill v. Curtis Publishing Co.*, 239 P.2d 630 (Cal. 1952).

Videotape broadcast of a judge leaving his home did not place him in a false light because it was a fair, accurate depiction of the person and scene, and was not highly offensive. *Aisenson v. American Broadcasting Co.*, 269 Cal. Rptr. 379 (Cal. Ct. App. 1990).

The juxtaposition of a picture of attendees of an "Exotic Erotic Ball" with pictures of performers at the ball did not amount to false light because the photos truthfully depicted both the revelry and performances that occurred at the ball. *Martin v. Penthouse*, 12 Med. L. Rptr. 2058 (Cal. Ct. App. 1986).

A sexually explicit magazine's publication of a cartoon and sequence of photographs portraying an anti-pornography activist could not be viewed by a reasonable reader as statements of fact, and therefore, did not place the activist in a false light. *Dworkin v. Hustler*, 668 F. Supp. 1408 (C.D. Cal. 1987), *aff'd on other grounds*, 867 F.2d 1188 (9th Cir.), *cert. denied*, 493 U.S. 812 (1989).

A former baseball player who claimed his image appeared in a drawing used to advertise beer could not pursue a false light claim against the advertisers because he was unable to show that the advertisement caused any damage to his business or property. *Newcombe v. Adolph Coors Co.*, 157 F.3d 686 (9th Cir. 1998).

Misappropriation: A computer-altered photograph of Dustin Hoffman, dressed in drag as he was in the movie "Tootsie," made him appear to be wearing certain designer clothes and was published as part of a spring fashion section of a magazine. A federal district judge ordered the magazine to pay Hoffman $1.5 million in compensatory and $1.5 million in punitive damages for altering and publishing the photograph without permission. *Hoffman v. Capital Cities/ABC, Inc.*, 33 F. Supp. 2d 867 (C.D. Cal. 1999).

The public's interest in a documentary about surfing precluded a depicted surfer's misappropriation claim. *Dora v. Frontline Video Inc.*, 18 Cal. Rptr. 2d 790 (Cal. Ct. App. 1993).

A photograph of revelers at an "Exotic Erotic Ball" was not misappropriation because the likenesses of the revelers were not commercially exploitable, and the magazine that published the photograph did not use the revelers' likenesses for advertising purposes. *Martin v. Penthouse*, 12 Med. L. Rptr. 2058 (Cal. Ct. App. 1986).

The unauthorized use of a celebrity's photo on the cover of a publication and in related televised advertisements used to promote an article that contained false information may be considered a misappropriation. *Eastwood v. Superior Court*, 198 Cal. Rptr. 342 (Cal. Ct. App. 1983).

A television commercial depicting a robot in Vanna White's *Wheel of Fortune* role permitted White to claim violation of a common law right of publicity, but not violation of California's misappropriation statute. *White v. Samsung Electronics America Inc.*, 971 F.2d 1395 (9th Cir. 1992), *reh'g denied*, 989 F.2d 1512 (9th Cir.), *cert. denied*, 113 S.Ct. 2443 (1993).

Hustler magazine's use of a woman's photograph to illustrate an article attacking her anti-pornography campaign was not misappropriation because her image was not used exclusively for *Hustler*'s commercial gain. The fact that *Hustler* was operated for profit did not automatically give its contents a commercial purpose. *Leidholdt v. L.F.P. Inc.*, 860 F.2d 890 (9th Cir. 1988), *cert. denied*, 489 U.S. 1080 (1989).

A feminist author did not state a misappropriation claim against a magazine for using her name in a sexually-explicit photograph and cartoon captions because the magazine did not appropriate the commercial benefit of her performance, and the captions did not suggest her endorsement of the magazine. *Dworkin v. Hustler*, 867 F.2d 1188 (9th Cir.), *cert. denied*, 493 U.S. 812 (1989).

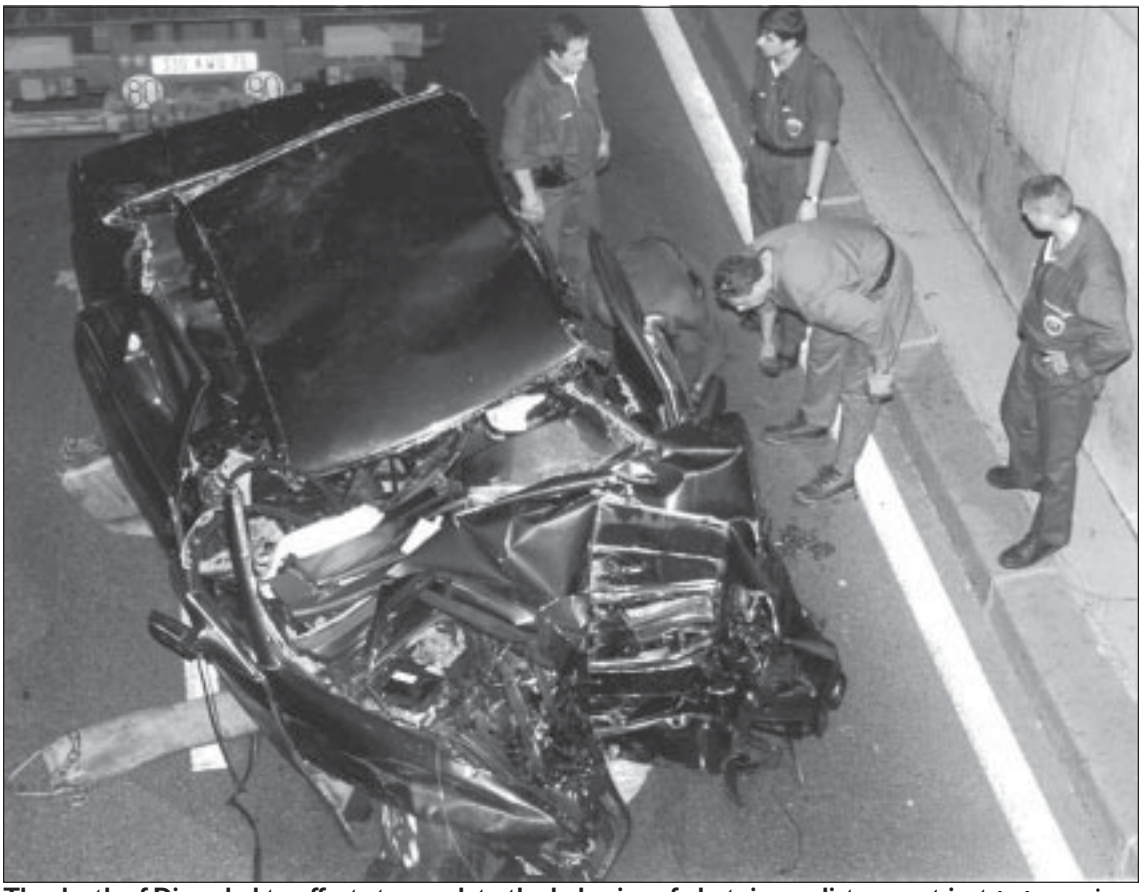
A magazine was entitled to use a celebrity's picture and refer to her in a truthful manner as part of an advertisement soliciting subscriptions, as long as the photo indicated the content of the publication — regardless of whether the celebrity actually had endorsed the publication. *Cher v. Forum*, 692 F.2d 634 (9th Cir. 1982), *cert. denied*, 462 U.S. 1120 (1983).

The "news account" exception to misappropriation under the California statute barred recovery by a domestic violence victim who was filmed by a television news magazine. *Baugh v. CBS Inc.*, 828 F. Supp. 745 (N.D. Cal. 1993).

The misappropriation statute's restrictions on the use of a "likeness" included the unauthorized use of a photograph of a distinctive, customized motorcycle, but no liability existed for the use of a picture of the motorcycle on a card soliciting magazine subscriptions. *Int-Elect Engineering Inc. v. Clinton Harley Corp.*, 21 Med. L. Rptr. 1762 (N.D. Cal. 1993).

A model was awarded $63,750 in damages for the unauthorized publication of a photograph on the cover of, and in an advertisements for, a pornographic magazine. *Clark v. Celeb Publishing Inc.*, 530 F. Supp. 979 (S.D.N.Y. 1981).

The creator of the 1950s "Vampira" television movie hostess character had no cause of action against a similar 1980s "Elvira" character because "likeness" means an exact copy, not a suggestive resemblance.



AP PHOTO

The death of Diana led to efforts to regulate the behavior of photojournalists — not just *paparazzi*.

Nurmi v. Peterson, 16 Med. L. Rptr. 1606 (C.D. Cal. 1989).

Advertisers who used a former professional baseball player's likeness, without his consent, in a drawing that appeared in an advertisement for beer misappropriated his image under common law and under the California statute, so long as the drawing could readily be identified as depicting the player. *Newcombe v. Adolph Coors Co.*, 157 F.3d 686 (9th Cir. 1998).

COLORADO

Colorado has recognized the intrusion, private facts and false light torts, but has not considered misappropriation.

Intrusion: A private investigator who was hired to determine whether a business was violating zoning laws entered the business property by posing as a customer, and observed the business from outside of the property with a telescopic lense. His actions did not intrude upon the business owners' seclusion. The business owners had no legitimate expectation of privacy in areas of their property visible from a public road, or in actions that violated the law. The court also recognized that business properties often are subject to a diminished expectation of privacy. *Sundheim v. Board of County Comm'rs*, 904 P.2d 1337 (Colo. App. 1995), *aff'd on other grounds*, 926 P.2d 545 (Colo. 1996).

When a television reporter enters private property to cover a news event of public interest, he cannot be found guilty of trespassing unless he intended to trespass, acted in reckless disregard of the owner's rights, or the owner suffered damage because of the trespass. *Allen v. Combined Communications*, 7 Med. L. Rptr. 2417 (Colo. Dist. Ct. 1981).

False light: A television broadcast that referenced a dispute between an employer and an employee over a fee paid to an employment agency, and which briefly showed a photo of the employment agency, did not place the agency in a false light. *McCammon & Associates v. McGraw-Hill Broadcasting Co.*, 716 P.2d 490 (Colo. App. 1986).

CONNECTICUT

Connecticut recognizes the four privacy torts.

Intrusion: A reporter and photographer who attended a private "mock unwedding" to celebrate the recent divorces of two individuals and published photographs of the celebration might have intruded upon the participants' privacy, depending on whether the news media were invited to the party. *Rafferty v. Hartford Courant*, 416 A.2d 1215 (Conn. 1980).

Surreptitiously photographing a prison inmate during his parole hearing, and subsequently broadcasting the footage, was not intrusive because the prisoner became a public figure by virtue of his crime and his public trial. *Travers v. Paton*, 261 F. Supp. 110 (D. Conn. 1966).

Private facts: A man who was arrested for drunken driving appeared on police videotape punching himself in an apparent effort to create evidence for a police brutality claim. The videotape was broadcast during an episode of the television news magazine *Hard Copy*. The broadcast did not amount to a publication of private facts because the story was newsworthy and of legitimate public concern, and because the man had no reasonable expectation of privacy during his arrest and subsequent booking. *Cowras v. Hard Copy*, No. 3:95CV99 (D. Conn. Sept. 29, 1997).

False light: A man arrested for drunken driving was captured on police videotape punching himself in an apparent effort to create evidence for a police brutality claim, and the videotape was broadcast on *Hard Copy*. The man could not support his false light claim, which in Connecticut requires a showing of "actual malice" — knowledge of falsity or reckless disregard for the truth — because the broadcaster's failure to interview the man or confirm that a police brutality complaint was being filed did not amount to reckless disregard for the truth. *Cowras v. Hard Copy*, No. 3:95CV99 (D. Conn. Sept. 29, 1997).

Misappropriation: A man who was arrested for drunken driving appeared on police videotape punching himself in an apparent effort to create evidence for a police brutality claim. The videotape was shown on *Hard Copy*. The man could not bring a misappropriation claim because the videotape was used to illustrate a noncommercial, newsworthy broadcast. The fact that the broadcasting company operates for profit did not, by itself, make the videotape use commercial. *Cowras v. Hard Copy*, No. 3:95CV99 (D. Conn. Sept. 29, 1997).

When a person whose photograph is used in an advertisement without his permission files suit and asks for punitive damages, he must prove malice — reckless indifference to the rights of others or intentional and wanton violation of those rights — to recover such damages. *Venturi v. Savitt*, 468 A.2d 933 (Conn. 1983).

Misappropriation can occur when a photo is used, without the subject's permission, for advertising purposes. *Korn v. Rennison*, 156 A.2d 476 (Conn. Super. Ct. 1959).

DELAWARE

Delaware has recognized the four privacy torts, but it has yet to consider a misappropriation case.

DISTRICT OF COLUMBIA

The District of Columbia recognizes the four privacy torts.

Intrusion: A reporter did not intrude upon the privacy of a public school principal and secretary by entering the school to interview the principal and, later, to retrieve a notebook because the reporter was only present in areas that were open to the public and in which school employees had no expectation of privacy. In addition, taking photographs in a public school while pursuing a news story would not be highly offensive to a reasonable person. *Marcus Garvey Charter Sch. v. Washington Times Corp.*, 27 Med. L. Rptr. 1225 (D.C. Super. Ct. 1998).

Private facts: A woman whose photographs were used in a department store's before-and-after presentation about plastic surgery potentially had a publication of private facts claim against her doctor because a jury could find the display highly offensive, and there was no sufficient connection between her photographs and the general subject of plastic surgery. The department store, however, was not liable because it believed she had consented to the public disclosure of the photographs. *Vassiliades v. Garfinckel's*, 492 A.2d 580 (D.C. Ct. App. 1985).

A jury was deemed the appropriate body to determine whether documentary film footage of a young girl using dolls to demonstrate alleged sexual abuse amounted to wrongful disclosure of private facts, or was a matter of legitimate public concern. *Foretich v. Lifetime Cable*, 777 F. Supp. 47 (D.D.C. 1991), *appeal dismissed*, 953 F.2d 688 (D.C. Cir. 1992) (case settled March 23, 1992).

The publication of a photograph of a drug addict alongside a story quoting the same addict but using a pseudonym was not publication of private facts because the addict consented to the interview and waived any privacy rights with respect to the photograph. The public's interest in drug addiction supported the dissemination of credible information on the effects and risks of drug abuse, and the addict's claims re-

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garding his lack of consent were not credible. *Little v. Washington Post*, 11 Med. L. Rptr. 1428 (D.D.C. 1985).

False light: A woman whose photographs were used in a before-and-after presentation about plastic surgery had no false light action because an alleged manipulation of lighting was insufficient to state a claim, and the presentation of the photographs did not suggest her endorsement. *Vassiliades v. Garfinckel's*, 492 A.2d 580 (D.C. Ct. App. 1985).

Four black youths attending a street festival were photographed standing on a corner near a telephone booth. The photograph was used six months later to illustrate a news magazine article on unemployment among young blacks and was captioned, "For young blacks who are unemployed, many empty hours are spent hanging out on city streets." The pictured youths, each of whom had a job, had sufficient grounds for a false light claim. Claims against the freelance photographer who took the picture were dismissed, however, because he did not write the caption. *Reid v. U.S. News & World Report*, No. 6828-82 (D.C. Super. Ct. 1983).

A woman whose photograph was broadcast in a television report while the accompanying narration said "for the 20 million Americans who have herpes, it's not a cure," had a valid false light claim because viewers might have inferred that she had herpes. *Duncan v. WJLA-TV* 106 F.R.D. 4 (D.D.C. 1984).

The photograph of a taxi driver, published without his consent alongside a satirical article about dishonest cab drivers, may provide grounds for a false light claim. *Peay v. Curtis Publishing Co.*, 78 F. Supp. 305 (D.D.C. 1948).

Television news broadcasts that suggested a local landlord, who was a private figure, tipped off drug dealers about an impending police raid did not create liability for false light invasion of privacy because the broadcasters were not negligent in failing to verify the truth of the allegation, as their source was a high-ranking police official whose credibility could be presumed. *Kendrick v. Fox Television*, 659 A.2d 814 (D.C. 1995).

AP PHOTO

Accident scenes may not be private, but victims have more of a privacy interest in a rescue vehicle.

A clarinetist with the National Symphony Orchestra had no false light claim as the result of the distribution of promotional materials for a holiday concert that depicted an actor posing as a clarinet player. The actor hired did not resemble the clarinetist, and thus, the publication was not "of and concerning him," and a photograph of a man merely playing a clarinet would not be highly offensive to a reasonable person. The clarinetist's proposed "reasonable performing artist" standard was rejected, and the more general reasonable person standard was applied. *Kitt v. Capital Concerts, Inc.*, No. 97-CV-780 (D.C. August 5, 1999).

Misappropriation: A woman whose photographs were used in a before-and-after presentation about plastic surgery had no misappropriation claim because there was no public interest or commercial value in her likeness. *Vassiliades v. Garfinckel's*, 492 A.2d 580 (D.C. Ct. App. 1985).

FLORIDA

Florida recognizes the four privacy torts, and has a right of publicity statute. Fla. Stat. § 540.08.

Intrusion: A photographer who accompanied a fire marshal into a home destroyed by fire did not intrude because consent to enter was implied based upon common custom and practice for the news media. *Florida Publishing Co. v. Fletcher*, 340 So.2d 914 (Fla. 1976), *cert. denied*, 431 U.S. 930 (1977).

Television reporters were not authorized to accompany police executing a warrant in a private school. *Green Valley School Inc. v. Cowles Florida Broadcasting Inc.*, 327 So.2d 810 (Fla. Dist. Ct. App. 1976).

An intrusion claim brought by a swimsuit model shown in advertisements for wet T-shirt and oil wrestling contests was rejected because the model's picture was professionally posed, demonstrating that she had consented to the taking of the photograph, and because she admitted that she sold the photograph to a nightclub owner. *Rosko v. Times Publishing Co. Inc.*, 19 Med. L. Rptr. 1766 (Fla. Cir. Ct. 1991).

Private facts: Broadcasting footage of the remains of an abducted child's skull did not support a private facts action by the child's family because the discovery of the remains was a matter of public interest. An "outrage" tort claim survived, however, because a broadcast close-up was gruesome and sensational, and the family was not forewarned. *Armstrong v. H & C Communications Inc.*, 575 So.2d 280 (Fla. Dist. Ct. App. 1991).

Unless a prosecutor makes an effort to exclude the news media at trial, publication of the name and photograph of a rape victim who testifies at a public trial does not invade the victim's privacy. *Doe v. Sarasota-Bradenton Television Co.*, 436 So.2d 328 (Fla. Dist. Ct. App. 1983).

A photograph of a half-nude woman escaping imprisonment by her armed, estranged husband was newsworthy, and thus its dissemination was not an invasion by publication of private facts, especially in light of the fact that more revealing photographs were not published. *Cape Publications v. Bridges*, 431 So.2d 988 (Fla. Dist. Ct. App.), *cert. denied*, 464 U.S. 893 (1983).

Broadcasting film of a state employee at a hotel bar while his office was being evacuated during a bomb threat did not support a private facts claim because the way public employees spent that time was a matter of public interest, and the employee was in a public place. *Stafford v. Hayes*, 327 So.2d 871 (Fla. Dist. Ct. App. 1976).

Public interest in a sexual assault at Walt Disney World precluded an invasion of privacy suit by the victim, who alleged a television station broke a promise to conceal her identity. *Doe v. H & C Communications Inc.*, 21 Med. L. Rptr. 1639 (Fla. Cir. Ct. 1993).

The private facts claim of a swimsuit model depicted in wet T-shirt and oil wrestling contest advertisements was rejected because the model had posed for the photograph and sold it to a nightclub. Under such circumstances, the court noted that if the model were "embarrassed by her obvious physical beauty, that would be her problem and not the problem of the law." *Rosko v. Times Publishing Co. Inc.*, 19 Med. L. Rptr. 1766 (Fla. Cir. Ct. 1991).

A television station's broadcast of film of the arrest of a man clad only in his underwear was protected because the film did not publicize any private facts concerning the man and because his arrest was a matter of legitimate public interest. *Spradley v. Sutton*, 9 Med. L. Rptr. 1481 (Fla. Cir. Ct. 1982), *appeal dismissed*, 430 So.2d 459 (Fla. Dist. Ct. App. 1983).

A photograph of a woman and her daughter at a courthouse during a paternity suit appearance was not private because it was taken in a public place. Also, details of the paternity suit were not private because they were disclosed in public records. Even if the photograph originally were private, it could have become public after it was purchased from a commercial photographer. *Heath v. Playboy Enters., Inc.*, 732 F. Supp. 1145 (S.D. Fla. 1990).

False light: Publication of a photograph of a man making an obscene gesture did not constitute false light invasion because the caption indicated that the photo had been retouched. *Byrd v. Hustler*, 433 So.2d 593 (Fla. Dist. Ct. App. 1983), *review denied*, 443 So.2d 979 (Fla. 1984).

A swimsuit model depicted in wet T-shirt and oil wrestling contest advertisements had no false light claim for the use of her photograph because the advertisements did not say she would participate in the contests. *Rosko v. Times Publishing Co. Inc.*, 19 Med. L. Rptr. 1766 (Fla. Cir. Ct. 1991).

The two essential elements for recovery under a false light theory in Florida are that the false light must be highly offensive to a reasonable person and must be accompanied by knowledge of, or reckless disregard for, the falsity of the publicized matter and the false light in which the subject would be placed. *Harris v. District Bd. of Trustees of Polk Community College*, 9 F.Supp.2d 1319 (M.D. Fla. 1998).

Misappropriation: A swimsuit model's consent to the general use of her photograph barred a misappropriation claim for use of her photograph in advertisements for wet T-shirt and oil wrestling contests. *Rosko v. Times Publishing Co. Inc.*, 19 Med. L. Rptr. 1766 (Fla. Cir. Ct. 1991).

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GEORGIA

Georgia recognizes the four privacy torts.

Intrusion: Filming a prisoner was not intrusive when it was done from a public view. *Cox Communications v. Lowe*, 328 S.E.2d 384 (Ga. Ct. App.), *cert. denied*, 474 U.S. 982 (1985).

Private facts: A photo of an exotic dancer that mistakenly was used for an advertisement in a magazine was not private or embarrassing. *Cabaniss v. Hipsley*, 151 S.E.2d 496 (Ga. Ct. App. 1966).

A woman whose breast was photographed with her permission, but depicted anonymously, at a body piercing shop became involved in a dispute with the shop after an advertisement that included the photograph ran without the shop's or the woman's permission. The woman later sued a newspaper for publishing the photograph along with her name — taken from court records — as part of its coverage of the dispute. A conditional privilege protecting republication of the contents of court reports precluded the woman's invasion of privacy claim against the newspaper. *Munoz v. American Lawyer Media*, No. A98A2351 (Ga. Ct. App. Feb. 15, 1999).

False light: There was no false portrayal of a blind street musician when his photograph was used to illustrate a record album cover. *Brown v. Capricorn Records Inc.*, 222 S.E.2d 618 (Ga. Ct. App. 1975).

Misappropriation: A street musician whose photograph was used to illustrate a record album cover could make a misappropriation claim. *Brown v. Capricorn Records Inc*, 222 S.E.2d 618 (Ga. Ct. App. 1975).

HAWAII

Hawaii has recognized misappropriation and false light invasion claims.

IDAHO

Idaho has recognized the four privacy torts.

Intrusion: A television station that filmed the arrest of a nude man was not liable for intrusion. The news media can report the details of an arrest, even if it results in disclosure of embarrassing private facts about the person arrested, as long as the report is made without malice. *Taylor v. KTVB Inc.*, 525 P.2d 984 (Idaho 1974).

A couple who used a radio scanner to overhear and record their neighbor's cordless telephone conversation, during which a murder plot allegedly was revealed, may have intruded upon the neighbor's seclusion. A statutory provision making it illegal to intercept cordless telephone calls arguably created a legitimate expectation of privacy regarding the contents of the neighbor's conversation and established grounds for an intrusion claim. *Hoskins v. Howard*, No. 23755 (Idaho Dec. 4, 1998).

Private facts: A couple who recorded a neighbor's telephone conversation by using a radio scanner alleged that the conversation revealed a murder plot and, consequently, provided the recording to law enforcement authorities. The couple may have published private facts about their neighbor in doing so because an Idaho law making the interception of cordless telephone calls illegal may have created a legitimate expectation that cordless calls would be remain private. *Hoskins v. Howard*, No. 23755 (Idaho Dec. 4, 1998).

False light: After a man and his wife used a radio scanner to intercept and record a neighbor's cordless telephone conversation, which allegedly included a death threat against the wife, they turned the recording over to the sheriff's office. Regardless of whether the recorded conversation could reasonably be interpreted as a death threat, the disclosure to the sheriff's office contained no "materially false" information, and thus, could not be grounds for a false light claim. *Hoskins v. Howard*, No. 23755 (Idaho Dec. 4, 1998).

ILLINOIS

Illinois generally recognizes the four privacy torts, although lower courts have disagreed about intrusion. *See Melvin v.*

Labor

Black Teenagers Without Jobs Time Bomb for U.S.

The clock is ticking on one of the nation's most intractable problems—the swelling ranks of young blacks unable to find work. As the economy worsens and government efforts slacken, their outlook is grim.

Idle and frustrated, a vast multitude of jobless young blacks are caught in a seemingly endless cycle of despair that could signal a new era of racial turbulence.

Lacking, in many cases, the skills, motivation or opportunity to break into the working world, they cluster in decaying central cities and desolate pockets of rural poverty. For

For young blacks who are unemployed, many empty hours are spent hanging out on city streets.

making drastic cuts in job programs. The Comprehensive Employment and Training Act, which at its height provid-

social costs are terrible crime, drugs, higher costs welfare and unemployme hardship on the family."

In one city after anoth crime rates soar with ris unemployment. In Oakla Calif., where 34 percent black youths are with work, authorities estimate t 90 percent of all burgla and break-ins are committ by jobless young people. Dr trafficking is rampant.

"Most of them want work, but there are no jobs be had," explains a black C land clergyman. "Can I te tell them, 'Thou shalt not drugs,' if I can't offer them alternative?"

Law-enforcement authorities say there are no hard measures to correlate black-youth unemployment and crir But social workers and black leaders in many cities say connection is obvious. "When a youth can't get a

Called 'unemployed' in a *U.S. News* caption, these men attending a street fair won a lawsuit against the magazine.

Burling, 490 N.E.2d 1011 (Ill. App. Ct. 1986) (recognizing intrusion); *Kelly v. Franco*, 391 N.E.2d 54 (Ill. App. Ct. 1979) (not recognizing intrusion).

Intrusion: Footage that was shot from behind a two-way mirror of an undercover police officer at a massage parlor did not invade the officer's privacy because his on-duty conduct was a legitimate area of public interest. *Cassidy v. ABC*, 377 N.E.2d 126 (Ill. App. Ct. 1978).

Filming a tattooed prisoner, stripped to his gym shorts, in an exercise cage may have invaded his privacy if the exercise cage were in a secluded area. *Huskey v. NBC*, 632 F. Supp. 1282 (N.D. Ill. 1986).

A prisoner's right to privacy may have been invaded when he was filmed in his cell without his consent. *Smith v. Fairman*, 98 F.R.D. 445 (C.D. Ill. 1982).

Private facts: A newspaper's publication of photographs of a woman's son as he was treated for a gunshot wound, and as he appeared after his death from that wound, supported a private facts claim brought by the woman. The son's death may have been a personal, rather than a public, event. In addition, the photographs may not have been necessary to convey otherwise newsworthy incidents of gang violence. The photographs also may have been highly offensive to a reasonable person. No private facts claim on the son's behalf could survive, however, because a dead person's privacy cannot be invaded. *Green v. Chicago Tribune*, 675 N.E.2d 249 (Ill. App. Ct. 1996).

False light: A television station's use of a judge's name and photograph in its report about an investigation into alleged judicial corruption might portray the judge in a false light. *Berkos v. NBC*, 515 N.E.2d 668 (Ill. App. Ct. 1987), *cert. denied*, 522 N.E.2d 1241 (Ill. 1988).

The unauthorized publication by *Hustler* magazine of nude photographs sold to *Playboy* portrayed the woman in a false light because *Hustler* has a racier context and because a caption implied that she was a lesbian. *Douglass v. Hustler*, 769 F.2d 1128 (7th Cir. 1985), *cert. denied*, 475 U.S. 1094 (1986).

A hospital security guard could not claim false light invasion of privacy against a television station that taped a guard arresting the camera operator. *Hunter v. Cook County*, 21 Med. L. Rptr. 1920 (N.D. Ill. 1993).

Misappropriation: The use of a photograph from a newscast as a "teaser" prior to the broadcast was not misappropriation. *Berkos v. NBC*, 515 N.E.2d 668 (Ill. App. Ct. 1987), *cert. denied*, 522 N.E.2d 1241 (Ill. 1988).

Jesse Jackson was unlikely to prevail on a misappropriation claim concerning the sale of videotape of a television network's reports on the 1988 Democratic Convention, which included a speech made by Jackson, because public figures have no misappropriation claim when their names and likenesses are used as part of news coverage. A court enjoined the sale of the videotape, however, because, without a disclaimer, Jackson's name and image on the package could falsely imply endorsement in violation of the Lanham Act. *Jackson v. MPI Home Video*, 694 F. Supp. 483 (N.D. Ill. 1988).

INDIANA

Indiana has recognized the four privacy torts, and has a misappropriation statute. Ind. Code § 32-13 (1994).

Private facts: The Indiana Supreme Court expressed reservations about the constitutionality of continuing to recognize the private facts tort in 1997. The court found the truth defense to libel, which is explicitly recognized in the Indiana Constitution, poses a substantial obstacle to the recognition of private facts claims, but declined to expand its ruling on the continued recognition of the cause of action beyond the case before it, which involved allegations by an HIV-positive man that information from medical files about his HIV status had been improperly accessed and disclosed to his co-workers. *Doe v. Methodist Hosp.*, 690 N.E.2d 681 (Ind. 1997).

False light: There is no privacy claim when an actor's career is critiqued, and as part of that critique, his film clips are edited and broadcast without his consent. *Perry v. Columbia Broadcasting Co.*, 499 F.2d 797 (7th Cir.), *cert. denied*, 419 U.S. 883 (1974).

IOWA

Iowa recognizes the torts of intrusion, private facts and false light. The state has not considered a misappropriation case.

Intrusion: Filming a person eating in a restaurant may be intrusive if the person objects to being filmed and is dining in a private or secluded section of the restaurant. *Stessman v. American Black Hawk Broadcasting Co.*, 416 N.W.2d 685 (Iowa 1987).

The publication of a photograph of the mutilated and decomposed body of a young boy who had been missing for a month was not intrusive because it accompanied a news story that was of legitimate public interest. *Bremmer v. Journal-Tribune Publishing Co.*, 76 N.W.2d 762 (Iowa 1956).

Photographing dead cattle on a farm, as part of a report on a sheriff's investigation into the livestock deaths, was not intrusive because of the public interest in the investigation. In addition, no trespass was involved because the sheriff gave the photographer permission to enter the property, and once the investigation had begun, the sheriff was the occupier and possessor of the farm and had the authority to grant such permission. *Wood v. Fort Dodge Mes-*

senger, 13 Med. L. Rptr. 1610 (Iowa Dist. Ct. Humboldt Co. 1986).

KANSAS

Kansas recognizes the four privacy torts.

Intrusion: A private figure who is filmed while on private property as the subject of a television news film may withdraw his consent at any time prior to the broadcast. *Belluomo v. KAKE-TV & Radio Inc.*, 596 P.2d 832 (Kan. Ct. App. 1979).

False light: The image of a bail bondsman present at the booking of certain accused gamblers did not portray the bondsman in a false light because the only names broadcast with the videotape were those of the arrested men. *Hartman v. Meredith Corp.*, 638 F. Supp. 1015 (D. Kan. 1986).

KENTUCKY

Kentucky recognizes the four privacy torts.

Intrusion: A news photograph that showed the governor's helicopter pilot emerging from a portable toilet was not intrusive because it was taken in a public place while the photographer covered a newsworthy event. *Livingston v. Kentucky Post*, 14 Med. L. Rptr. 2076 (Ky. Cir. Ct. 1987).

Private facts: The widow of a man who was murdered in an office massacre could not sue a newspaper for publishing photographs of his corpse because the murder was of public concern and because only living people can sue for invasion of privacy. *Barger v. Courier-Journal*, unpublished, 20 Med. L. Rptr. 1189 (Ky. Ct. App. 1991), *cert. denied*, 112 S.Ct. 1763 (1992).

False light: A boy pictured in a charity's solicitation pamphlet that incorrectly stated he lived in a trailer was entitled to nominal false light damages. The boy's parents, however, were not allowed to recover damages. *Bowling v. Missionary Servants of the Most Holy Trinity*, 972 F.2d 346, 20 Med. L. Rptr. 1496 (6th Cir. 1992).

A woman whose nude photograph is submitted to a sexually explicit magazine and published without her knowledge must prove the magazine knew that the submitted consent forms were forged, or acted with reckless disregard for the accuracy of the consent forms, to win a false light claim. *Ashby v. Hustler*, 802 F.2d 856 (6th Cir. 1986).

Misappropriation: A boy who was pictured in a charity's solicitation pamphlet that incorrectly stated he lived in trailer was entitled to a $100 modeling fee as damages. *Bowling v. Missionary Servants of the Most Holy Trinity*, 972 F.2d 346, 20 Med. L. Rptr. 1496 (6th Cir. 1992).

LOUISIANA

Louisiana recognizes the four privacy torts.

Intrusion: A photograph of an "unkempt" house is not intrusive if it is taken from a public view. *Jaubert v. Crowley Post-Signal*, 375 So.2d 1386 (La. 1979).

Private facts: A man who was injured at work when a machine exploded won a private facts suit against the company he worked for because it displayed gruesome photographs of the man's operation as part of its safety training efforts. *Lambert v. Dow Chemical Co.*, 215 So.2d 673 (La. Ct. App. 1968).

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Broadcasting a priest's homemade video of himself engaging in homosexual activity with young men was directly related to matters of public concern, including an elected official's decision not to bring charges. *Cinel v. Connick*, 15 F.3d 1338 (5th Cir. 1994).

False light: The use of stock Mardi Gras parade footage in an "adult" film was not false light invasion because there was no implication connecting any parade participant with the actions of the film's main characters. *Easter Seal Society v. Playboy Enterprises Inc.*, 530 So.2d 643 (La. Ct. App. 1988).

Chef Paul Prudhomme was permitted to pursue a false light claim over a coffee commercial that featured an actor bearing a "striking resemblance" to Prudhomme. *Prudhomme v. The Proctor & Gamble Co.*, 800 F. Supp. 390 (E.D. La. 1992).

A photograph of husband-and-wife police officers kissing on their motorcycles, which was published in *Men* magazine, was considered newsworthy. And because the police officers were "public figures," they would have had to prove actual malice — knowledge of falsity or reckless disregard for the truth — to win a false light claim, which they could not do since the photograph was published "without alteration and with a proper caption." *Faucheux v. Magazine Management*, 5 Med. L. Rptr. 1697 (E.D. La. 1979).

Misappropriation: The unauthorized use of a person's photograph in an advertisement constituted an invasion of privacy by misappropriation. *McAndrews v. Roy*, 131 So.2d 256 (La. Ct. App. 1961).

Chef Paul Prudhomme was permitted to claim misappropriation over a coffee commercial that featured an actor who resembled the chef. *Prudhomme v. Proctor & Gamble Co.*, 800 F. Supp. 390 (E.D. La. 1992).

MAINE

Maine recognizes the four privacy torts.

Intrusion: In pursuit of an interview with a man who fell from an airplane, a tabloid reporter who repeatedly visited the man's house then followed him to a restaurant might have proved annoying but was not acting in a highly offensive manner. If taking a photograph in a public place cannot be an intrusion, then an attempt to take such a photograph cannot create liability either. *Dempsey v. National Enquirer*, 702 F. Supp. 927 (D. Me. 1988).

Misappropriation: A photograph of an Indian baby reprinted from a book that was being reviewed was not a misappropriation because the photograph was not altered and did not materially benefit the newspaper. *Nelson v. Maine Times*, 373 A.2d 1221 (Maine 1977).

MARYLAND

Maryland recognizes the four privacy torts.

Intrusion: Permitting the news media to "ride along" into a person's home with law enforcement officers as they execute an arrest warrant does not necessarily violate a Fourth Amendment right to be free from unreasonable searches and seizures, a federal appellate court held in a case where reporters accompanied officers attempting to execute an arrest warrant in a home in Maryland. *Wilson v. Layne*, 141 F.3d 111 (4th Cir. 1998), *aff'd on other grounds*, 119 S.Ct. 1692 (1999). The U.S. Supreme Court, however, held in May 1999 that law enforcement officers who permit the news media to follow them into a home while serving a warrant violate the Fourth Amendment rights of the subjects of warrants. *Wilson v. Layne*, 119 S.Ct. 1692 (1999).

Private facts: The publication of a criminal mug shot was not a private facts invasion because the mug shot was part of a public record. *Pemberton v. Bethlehem Steel Corp.*, 502 A.2d 1101 (Md. App.), *cert. denied*, 508 A.2d 488 (Md.), *cert. denied*, 107 S.Ct. 571 (1986).

A photograph of a man sitting in a backyard that was used to illustrate an article about teen murders did not reveal "private information." *Kelson v. Spin Publications, Inc.*, 16 Med. L. Rptr. 1130 (D. Md. 1988).

False light: A photograph of a man sitting in a backyard that was used to illustrate an article about teen murders, drug

abuse, and severe economic hardship in Baltimore gave rise to a false light claim because a reasonable editor might have realized that the juxtaposition posed a substantial danger to the man's reputation. *Kelson v. Spin Publications, Inc.*, 16 Med. L. Rptr. 1130 (D. Md. 1988).

Misappropriation: A newspaper's republication of a front-page photograph of children at a fair that had been taken for an advertising campaign was not misappropriation because the photo was used to illustrate the quality and content of the newspaper, not to exploit the children, whose mother gave her consent for the first publication. *Lawrence v. A.S. Abell Co.*, 475 A.2d 448 (Md. 1984).

UPI PHOTO

A futile attempt to stop a suicide on a bridge was captured by a photographer passing by.

MASSACHUSETTS

Massachusetts recognizes intrusion, private facts and misappropriation, but has declined to determine whether to permit false light claims. *Fox Tree v. Harte-Hanks Communications, Inc.*, 501 N.E.2d 519 (Mass 1986). The state has a misappropriation statute. M.G.L. 214, § 3A.

Intrusion: A court prohibited the general distribution of a film shot at a state institution for the criminally insane because it portrayed identifiable inmates who were naked, or showed painful aspects of mental disease. The film maker also failed to obtain valid releases from all individuals portrayed. The court ruled, however, that the film could be shown to audiences with a professional interest in rehabilitation. *Massachusetts v. Wiseman*, 249 N.E.2d 610 (Mass.), *cert. denied*, 398 U.S. 960 (1969).

Private facts: The telecast of a person's arrest in a murder investigation was not a public disclosure of private facts because the arrest was a matter of public interest. *Jones v. Taibbi*, 512 N.E.2d 260 (Mass. 1987).

False light: A television news broadcast recounted the disappearance of a flight attendant and included interviews with relatives who stated that they believed the flight attendant had been killed by her husband. The broadcast, much of which was based on information found in documents filed in the couple's divorce proceedings, also relayed the fact that the police considered the husband a suspect in the disappearance of his wife. The court considered the husband's false light claim to be indistinguishable from his defamation claim and dismissed both claims, finding that neither falsity, nor the requisite negligence, had been established to support either claim. *Brown v. Hearst Corp.*, 54 F.3d 21 (1st Cir. 1995).

A photograph of a normal child taken for a newspaper's Christmas charity drive and republished two years later as an illustration for an article on mentally retarded children did not place the child in a false light because he was not identifiable from the photo or accompanying article. *Brauer v. Globe Newspaper Co.*, 217 N.E.2d 736 (Mass. 1966).

A photograph of people standing in line for unemployment checks is protected, even if one of the people pictured was there as an interpreter and not to pick up a check, because the photograph was taken in a public place and was newsworthy. *Cefalu v. Globe Newspaper Co.*, 391 N.E.2d 935 (Mass. App. Ct. 1979), *cert. denied*, 444 U.S. 1060 (1980).

Publishing a stock photo of a fisherman with an article about organized crime at fish markets might damage the reputation of the fisherman pictured; he had sufficient grounds to file a false light claim. *Morrell v. Forbes*, 603 F. Supp. 1305 (D. Mass. 1985).

Misappropriation: The photograph of a woman surrounded by a party scene, which accompanied an article on modern social mores called "After the Sexual Revolution," was not misappropriation because the photo was published as sociological commentary, not to solicit sales of the magazine. *Tropeano v. Atlantic Monthly*, 400 N.E.2d 847 (Mass. 1980).

MICHIGAN

Michigan recognizes the four privacy torts.

Private facts: A photograph of undercover narcotics agents that was taken as they entered a courthouse to testify did not disclose private facts because it was taken in a public place and accompanied a news article about a political and philosophical controversy. *Ross v. Burns*, 612 F.2d 271 (6th Cir. 1980).

False light: A television documentary on prostitution showed a black woman walking down a Detroit street while the accompanying narration described the effect of the influx of prostitutes on an integrated neighborhood. The woman said the film portrayed her as a prostitute, and the court agreed. She had sufficient grounds for a

false light claim. *Clark v. American Broadcasting Cos.*, 684 F.2d 1208 (6th Cir. 1982), *cert. denied*, 460 U.S. 1040 (1983).

A group of Shriners could not sue *Newsweek* for false light for selling a photograph for use on an album cover because the magazine was not actively involved in designing the album cover. *Morris v. Boucher*, 15 Med. L. Rptr. 1089 (E.D. Mich. 1988).

Retouched photographs of a woman were published to illustrate articles on prostitution. The woman would have grounds for a false light claim if she were identifiable from the pictures, despite the fact that she was photographed in a public place. *Parnell v. Booth Newspapers Inc.*, 572 F. Supp. 909 (W.D. Mich. 1983).

A television documentary that portrayed hunting practices in Michigan did not place hunters in a false light because no individual hunters were identified. *Michigan United Conservation Clubs v. CBS News*, 485 F. Supp. 893 (W.D. Mich. 1980), *aff'd*, 665 F.2d 110 (6th Cir. 1981).

Misappropriation: A group of Shriners could not sue *Newsweek* for misappropriation of a photograph it sold to the band The Dead Kennedys, who used picture on an album cover, because the magazine was not involved in the promotion or sale of the album. *Morris v. Boucher*, 15 Med. L. Rptr. 1089 (E.D. Mich. 1988).

MINNESOTA

The Minnesota Supreme Court recognized a right to privacy for the first time in July 1998. *See Lake v. Wal-Mart Stores, Inc.*, 582 N.W.2d 231 (Minn. 1998).

Intrusion: Discount store customers who had brought their film to the store to be developed stated an intrusion claim against store employees who distributed nude photographs of those customers throughout the community. *Lake v. Wal-Mart Stores, Inc.*, 582 N.W.2d 231 (Minn. 1998).

Private facts: Discount store customers who took film to the store for development could pursue a private facts claim against the store employees who distributed nude photographs of the customers to members of the community. *Lake v. Wal-Mart Stores, Inc.*, 582 N.W.2d 231 (Minn. 1998).

Misappropriation: Discount store employees who distributed throughout the community nude photographs of customers who had brought their film to the store for developing were subject to an appropriation claim brought by those customers. *Lake v. Wal-Mart Stores, Inc.*, 582 N.W.2d 231 (Minn. 1998).

There was no misappropriation when private figures who consented to being filmed for a promotional film about a university football team were later shown on a public service announcement that appeared on television. *House v. Sports Films & Talents*, 351 N.W.2d 684 (Minn. Ct. App. 1984).

MISSISSIPPI

Mississippi recognizes intrusion, private facts, and misappropriation but has reserved the question of whether to allow false light claims.

Intrusion: The publication of photographs of mentally retarded children without the consent of their parents may be intrusive, even though the photographs accompanied an article about a public school's special education class, which was a matter of legitimate public interest. *Deaton v. Delta Democrat Publishing Co.*, 326 So.2d 471 (Miss. 1976).

Private facts: As long as photographs of public officials, such as a sheriff, are taken for publication in connection with a legitimate news story, there can be no invasion of privacy. *Martin v. Dorton*, 50 So.2d 391 (Miss. 1951).

False light: The publication of a photograph of a person involved in an automobile accident who was charged with driving under the influence, and an article stating that he had been charged similarly three weeks earlier, was not false light invasion because the portrayal was accurate. *Prescott v. Bay St. Louis Newspapers*, 497 So.2d 77 (Miss. 1986).

MISSOURI

Missouri has recognized intrusion, false light, and misappropriation claims but has questioned the false light tort. *Sullivan v. Pulitzer Broadcasting Co.*, 709 S.W.2d 475 (Mo. 1986).

Intrusion: Even though an enormously obese hospital patient granted an interview to a reporter and talked about her illness, she did not give the reporter permission to use her name or photograph, and when her name and photograph were published, she had grounds for an invasion of privacy suit. *Barber v. Time, Inc.*, 159 S.W.2d 291 (Mo. 1942).

An undercover television reporter who entered a hospital's alcohol treatment center by pretending to be an alcoholic did not commit intrusion against the hospital because corporations have no right of privacy. *W.C.H. of Waverly v. Meredith Corp.*, 13 Med. L. Rptr. 1646 (W.D. Mo. 1986).

Private facts: Television footage of a person with his hands on top of a police car during an erroneous arrest did not disclose any private facts because the arrest was a matter of legitimate public interest, and the film was shot in a public place. *Williams v. KCMO*, 472 S.W.2d 1 (Mo. 1971).

A couple videotaped at a hospital function and identified as participants in an *in vitro* fertilization program stated a claim for publication of private facts. *Y.G. v. Jewish Hospital of St. Louis*, 1990 WL 99335 (Mo. Ct. App. July 12, 1990).

False light: A photograph taken during a sheriff's drug raid that showed a sign bearing the name of a Christmas-tree farm did not portray the farm's owner in a false light, even though he was not the subject of the raid, and no drugs were found on his property. Police activities are a matter of public interest and cannot be the basis for a false light claim. The article accompanying the photo did not mention the landowner's name, as it reported only the names of people involved in the raid. *Hagler v. Democrat-News*, 699 S.W.2d 96 (Mo. Ct. App. 1985).

MONTANA

Montana has implicitly recognized the false light tort but has not yet recognized intrusion, private facts, or misappropriation claims.

Intrusion: The news media can become liable for violations of the Fourth Amendment's provisions against unreasonable government searches and seizures if they accompany officers in the execution of search and arrest warrants and become joint actors with the officers. *Berger v. Hanlon*, 129 F.3d 515 (9th Cir. 1997), *vacated on other grounds and remanded*, 119 S.Ct. 1706 (1999). While the U.S. Supreme Court held in May 1999 that law enforcement officers who permit the news media to accompany them into a home while serving warrants violate the Fourth Amendment rights of the subjects of those warrants, it did not address whether the news media can themselves become liable for any resulting Fourth Amendment violations. *See Wilson v. Layne*, 119 S.Ct. 1692 (1999) and *Hanlon v. Berger*, 119 S.Ct. 1706 (1999).

NEBRASKA

Nebraska recognizes intrusion, false light, and commercialization by statute but does not recognize private facts. Neb. Rev. Stat. §§ 20-202 to 211.

Intrusion: A woman who was secretly photographed while at a tanning salon had a claim against the tanning salon owner who photographed her even if she could not prove the incident caused her severe emotional distress. *Sabrina W. v. Willman*, 540 N.W.2d 364 (Neb. Ct. App. 1995).

NEVADA

Nevada's courts have recognized the torts of intrusion, private facts, and misappropriation and have suggested they would recognize false light. Nevada also has a right of publicity statute. NRS 598.980-.988.

Intrusion: Secretly videotaping an orangutan trainer in a staging area did not amount to an intrusion on his seclusion because he did not expect to be isolated, and any intrusion that did occur was not highly offensive. *PETA v. Bobby Berosini Ltd.*, 867 P.2d 1121 (Nev. 1994).

Misappropriation: An animal trainer who was secretly videotaped could not claim common-law misappropriation because the tort applies to ordinary people, not celebrities; the trainer should have sought recovery under the right of publicity statute. *PETA v. Bobby Berosini Ltd.*, 867 P.2d 1121 (Nev. 1994)

A custody fight for Hilary Foretich led to privacy suits.

NEW HAMPSHIRE

New Hampshire courts have recognized intrusion and private facts claims. They have not considered false light, and a lower court has rejected the misappropriation tort.

Private facts: A prisoner who voluntarily participated in a television interview for a documentary on prisons and prisoner rehabilitation did not have grounds for an intrusion claim. The court noted that the subject matter of the film was of public interest and that the prisoner was a public figure because of his crime. *Buckley v. WENH*, 5 Med. L. Rptr. 1509 (D.N.H. 1979).

NEW JERSEY

New Jersey recognizes the four privacy torts.

Intrusion: An article about a home sale that included a picture of the home was not actionable as intrusion because the photograph was taken from a public street, and the view was available to any bystander. *Bisbee v. Conover*, 452 A.2d 689 (N.J. Super. Ct. App. Div. 1982).

A reporter who conducted a surprise interview with a company's owner was not liable for trespass because he was not warned off and actually had been directed by an employee to the front office. *Machleder v. Diaz*, 801 F.2d 46 (2d Cir. 1986), *cert. denied*, 479 U.S. 1088 (1987)

Private facts: The owner of a company who became agitated during a surprise television interview about the dumping of hazardous waste on neighboring property had no private facts claim because the encounter was in a semi-public place, the owner knew the cameras were rolling, and the facts were not highly offensive. *Machleder v. Diaz*, 801 F.2d 46 (2d Cir. 1986), *cert. denied*, 479 U.S. 1088 (1987).

False light: A teacher could not sue for false light based on a yearbook "funny pages" photograph of her with another teacher that was captioned, "Not tonight Ms. Salek. I have a headache." The photograph clearly was parody, satire, humor, or fantasy. *Salek v. Passaic Collegiate School*, 605 A.2d 276 (N.J. Super. Ct. App. Div. 1992).

The owner of a company who was subjected to a surprise television interview about the dumping of hazardous waste on neighboring property had no false light claim based on the station's failure to include less incriminating statements. In addition, there was insufficient evidence to prove the owner was not "intemperate and evasive." The court added that even if false, the portrayal was not highly offensive. A jury found that the illegal dumping allegation was not substantially false. *Machleder v. Diaz*, 801 F.2d 46 (2d Cir. 1986), *cert. denied*, 479 U.S. 1088 (1987).

A sociology textbook photograph of a white police officer shown using his night stick to prod a black man who was asleep in a public place and accompanied by a caption that questioned whether the officer would do the same if the man were white, was not false light. Because the picture was used in an educational context, the officer was not identified, and the caption only described the action in the photo and asked a rhetorical question, it was editorial opinion and could not be a false portrayal. *Cibenko v. Worth Publishers*, 510 F. Supp. 761 (D.N.J. 1981).

Misappropriation: The family of a police officer whose death CBS dramatized had no cause of action because the murder was of legitimate public concern. The court also rejected an intentional infliction of emotional distress claim. *Lamonaco v. CBS Inc.*, unpublished, 21 Med. L. Rptr. 2193 (D.N.J. 1993).

When a book did not include a particular photo of a Vietnam veteran, but the publisher's promotional letter and mail campaign advertisement envelope did, the use of that photograph was misappropriation. *Tellado v. Time-Life*, 643 F. Supp. 904 (D.N.J. 1986).

NEW MEXICO

New Mexico recognizes the four privacy torts.

False light: An artist drew a sketch of a normal Navajo child that later became a design for note cards sold to benefit United Cerebral Palsy. The publication of a photograph of the sketch alongside a newspaper article about the card's sale did not portray the child in a false light. The court said that while traditional Navajos might believe the child would have bad luck later in life because the photo associated her with cerebral palsy, "persons of ordinary sensibilities" would not find the portrayal offensive. *Bitsie v. Walston*, 515 P.2d 659 (N.M. Ct. App. 1973).

Misappropriation: The photograph of a Navajo woman and her son published with an article about the work of a deceased photographer was not misappropriation because the photograph was used for an

illustrative, not commercial, purpose. *Bennally v. Hundred Arrows Press*, 614 F. Supp. 969 (D.N.M. 1985), *rev'd on other grounds*, 858 F.2d 618 (10th Cir. 1988).

NEW YORK

The right to privacy in New York is governed solely by a misappropriation statute. N.Y. Civ. Rights Law §§ 50, 51.

Intrusion: An HBO camera crew filmed models posing naked on New York City streets for a program called "Real:Sex." A bystander who saw a crowd gathered around the models stopped to see what was happening, was filmed as part of the crowd, and appeared on the program in introductory footage as part of the crowd and in a close-up. She had no invasion of privacy claim because she voluntarily joined a crowed gathered at a newsworthy event, and her embarrassment alone could not support an invasion claim. *Gaeta v. Home Box Office*, 645 N.Y.S.2d 707 (N.Y. Civ. Ct. 1996).

Television crew members who entered a restaurant, without consent and with cameras rolling, after a health code violation against the restaurant was announced were guilty of trespass. Even though the restaurant was open to the public, the television crew had no intention of buying food or beverages there. The court found the crew's presence to be noisy and obtrusive and said patronizing a restaurant does not carry with it an obligation to appear on television. *Le Mistral Inc. v. CBS*, 402 N.Y.S.2d 815 (N.Y. App. Div. 1978).

A television camera crew intruded on private property when it videotaped unauthorized interviews with minors at an institution for dependent and neglected children. *Quinn v. Johnson*, 381 N.Y.S.2d 875 (N.Y. App. Div. 1976).

Consent to being photographed may be implied by a highly public lifestyle, which makes the person a subject of public interest. However, a photographer was found to have harassed Jackie Onassis by constantly tailing her, jumping about to position himself for photos, bribing doormen for a chance to get closer to her, and romancing family servants to learn her schedule. *Galella v. Onassis*, 487 F.2d 896 (2d Cir. 1973). Nine years later, the photographer was found in contempt of an earlier injunction against such behavior. *Galella v. Onassis*, 533 F. Supp. 1076 (S.D.N.Y. 1982).

A television interview with a mentally impaired criminal defendant, who was found incompetent to stand trial, was intrusive because even though the defendant consented to the interview, his doctor did not. *Delan v. CBS*, 445 N.Y.S.2d 898 (N.Y. App. Div. 1981), *modified*, 458 N.Y.S.2d 608 (N.Y. App. Div. 1983).

A television crew that was invited by a humane society investigator to accompany him could not claim that either the newsworthiness of the official's search of a house or custom implied the consent of the homeowner for the media to enter the house. A court upheld the homeowner's right to bring trespass charges against the media. *Anderson v. WROC-TV* 441 N.Y.S.2d 220 (N.Y. Sup. Ct. 1981).

By accompanying federal agents on a search of an apartment, a television news crew may have become a "state actor," and thus, may have violated the constitutional privacy rights of a woman and her son. *Ayeni v. CBS Inc.*, 848 F. Supp. 362 (E.D.N.Y. 1994).

Photographers' Guide to

PRIVACY

Misappropriation: A man who had been held hostage alleged that a magazine photograph essay falsely reported that a new play portrayed his family's experience. The U.S. Supreme Court held that the man would have to prove that the magazine published the essay with knowledge of falsity or with reckless disregard for the truth. *Time, Inc. v. Hill*, 385 U.S. 374 (1967).

Radio personality Howard Stern sued an Internet services company for using his photograph — for which he had posed — without permission in an advertisement for an on-line bulletin board service set up for debating Stern's political candidacy. Stern had no misappropriation claim because the primary goal of the advertisement was to inform potential subscribers about the contents of the on-line service, and the use of Stern's photograph was incidental. *Stern v. Delphi Internet Servs.*, 626 N.Y.S.2d 694 (N.Y. Sup. Ct. 1995).

The photograph of a woman who was HIV-positive and afflicted with AIDS-related illnesses was used to illustrate a newspaper article about her, and in the article she was described as having AIDS, rather than as being HIV-positive. She had no claim for the unauthorized use of her likeness for advertising purposes against the newspaper because discrimination against AIDS or HIV-positive patients was a matter of public concern, and state laws relating to the confidentiality of AIDS and HIV diagnoses "apply to health care providers and certain others, not the news media." *Cruz v. Latin News*, 627 N.Y.S.2d 388 (N.Y. App. Div. 1995).

The privacy rights of a woman who was photographed at a psychiatric facility walking with the mother implicated in a well-publicized child-beating death were not violated because the photograph was related to a news story about a matter of public interest. The court also rejected an intentional infliction of emotional distress claim against the photographer, who used a telephoto lens. *Howell v. New York Post Co.*, 612 N.E.2d 699 (N.Y. 1993).

A doctor won $75,700 for her identified depiction in the background of a picture in a medical center's promotional calendar. *Beverley v. Choices Women's Medical Center, Inc.*, 587 N.E.2d 275 (N.Y. 1991).

A couple whose family photograph illustrated a magazine article about caffeine and fertility could not sue for misappropriation, even though the photograph was taken years earlier for another purpose. The court held there was a link between the newsworthy article about fertility and the picture of a large family. *Finger v. Omni Publications International Ltd.*, 566 N.E.2d 141 (N.Y. 1990).

A man misidentified in a photograph as the person berating the mayor had no cause of action because the picture was newsworthy and was not used for advertising purposes. *Bytner v. Capital Newspapers*, 492 N.E.2d 1228 (N.Y. 1986).

The photograph of a professional model in a bomber jacket in a column about new products was not misappropriation because it was published to illustrate a legitimate public interest, not for advertising or trade purposes. *Stephano v. News Group Publications*, 474 N.E.2d 580 (N.Y. 1984).

A photograph of a nude woman and child taken from behind might be misappropriation if the woman and child were identifiable from that position. *Cohen v. Herbal Concepts*, 472 N.E.2d 307 (N.Y. 1984).

A newspaper's publication of a photograph of a black man, taken in a public place, to illustrate an article on the upward mobility of blacks was not misappropriation because his name was not used, and the photograph was published for illustrative, not commercial purposes. But the photographer and agency that supplied the picture to the newspaper were liable under a state misappropriation law. The law subsequently was amended to protect freelancers supplying photographs for use as news. *Arrington v. New York Times*, 433 N.Y.S.2d 164 (N.Y. App. Div. 1980), *modified*, 55 N.Y.2d 433 (1982), *cert. denied*, 459 U.S. 1146 (1983).

Aides to Sen. Joseph McCarthy could not claim misappropriation based on a film about McCarthy because they did not prove their portrayals were false and

published with knowledge of falsity or reckless disregard for the truth. *Cohn v. National Broadcasting Co., Inc.*, 414 N.Y.S.2d 906 (N.Y. App. Div. 1979), *aff'd*, 50 N.Y.2d 885 (N.Y.), *cert. denied*, 449 U.S. 1022 (1980).

The use of an athlete's photograph was found merely incidental to a magazine advertisement because the magazine carried accurate articles about the athlete. *Namath v. Sports Illustrated*, 48 A.D.2d 487 (N.Y. App. Div. 1975), *aff'd*, 352 N.E.2d 584 (N.Y. 1976).

The doctor on the right won a $75,700 verdict.

A magazine cover depicting a spectator watching a parade was not misappropriation because the parade was a newsworthy event. *Murray v. New York Magazine Co.*, 267 N.E.2d 256 (N.Y. 1971).

The use of a photograph of an actress in an advertisement for a magazine, which was republished from an article about her, was incidental and not misappropriation. *Booth v. Curtis Publishing Co.*, 223 N.Y.S.2d 737 (N.Y. App. Div. 1962), *aff'd*, 182 N.E.2d 812 (N.Y. 1962).

Consent obtained from his agent precluded a model from suing Nintendo for using his photograph on video game packages; the misappropriation statute's consent provision does not encompass the full requirements of a legally binding contract. *Cory v. Nintendo of America Inc.*, 592 N.Y.S.2d 6 (N.Y. App. Div. 1993).

A newspaper's use of a reproduced cover featuring an activist to solicit subscriptions did not misappropriate the activist's image. *Velez v. VV Publishing Corp.*, 524 N.Y.S.2d 186 (N.Y. App. Div.), *cert. denied*, 529 N.E.2d 425 (N.Y. 1988).

An episode of Howard Stern's television show included a skit in which a married woman gave Stern a massage, and her husband's photograph appeared during the broadcast. The husband's misappropriation claim was dismissed because the "newsworthiness" exception extends to comedic performances. *Glickman v. Stern*, 19 Med. L. Rptr. 1769 (N.Y. Sup. Ct. 1991), *aff'd*, 592 N.Y.S.2d 581 (N.Y. App. Div. 1992).

The use of an actor's old commercial in a television show about classic commercials was newsworthy and was not an advertising or trade use. *Welch v. Group W Productions*, 525 N.Y.S.2d 466 (N.Y. Sup. Ct. 1987), *aff'd*, 540 N.Y.S.2d 121 (N.Y. App. Div. 1989).

A newspaper illustrated an article about young drug dealers with a drawing that a freelance artist based on posed photographs of youths not involved in the drug trade; no misappropriation claim existed because there was no showing that the newspaper was at fault. *Quezada v. Daily News*, 501 N.Y.S.2d 971 (N.Y. App. Term 1986).

The publication of a photograph of nude sunbathers in a guide book on nude beaches was not misappropriation because the photograph was taken with the consent of the sunbathers and was used to illustrate a book about a matter of public interest. *Creel v. Crown Publisher*, 496 N.Y.S.2d 219 (N.Y. App. Div. 1985).

A man who alleged his photograph appeared in a magazine for homosexuals, with false statements attributed to him, stated both misappropriation and libel claims. *Palmisano v. Modernismo Publications, Ltd.*, 470 N.Y.S.2d 196 (N.Y. App. Div. 1983).

A mentally disabled patient who appeared briefly in a documentary about institutionalization had no misappropriation claim regardless of whether there was valid consent because the appearance was incidental, and the documentary was of public interest. *Delan v. CBS, Inc.*, 458 N.Y.S.2d 608 (N.Y. App. Div. 1983).

The female boxer who alleged that another woman was identified as her in *Celebrity Skin* magazine stated a misappropriation claim because, although the nude picture of her would be newsworthy, the picture of a woman misidentified as her would not be newsworthy. To prevail, the boxer would be required to prove knowledge of falsity or reckless disregard for the truth. *Davis v. High Society Magazine, Inc.*, 457 N.Y.S.2d 308 (N.Y. App. Div. 1982).


Bobby Berosini sued over a secret videotape.

A court overturned a preliminary injunction awarded a well-known model seeking to stop distribution of an edition of *Celebrity Skin* magazine containing nude photographs of her because money damages could compensate her for any harm, and she did not establish a clear right to relief for the alleged misappropriation. *Hansen v. High Society Magazine, Inc.*, 429 N.Y.S.2d 552 (N.Y. App. Div. 1980).

Displaying a woman's photograph during a talk show did not violate the misappropriation statute because the broadcast about relationships between mothers and daughters was of public interest. *Wallace v. WWOR-TV Inc.*, 21 Med. L. Rptr. 1959 (N.Y. Sup. Ct. 1993).

A model who gave written consent to his photographer was barred from bringing a misappropriation claim when the photographs were used in advertisements. *Delaney v. Newsday*, 18 Med. L. Rptr. 1885 (N.Y. Sup. Ct. 1991).

The photograph of a "disappeared" agent and his wife did not misappropriate her image because the photograph had a "real relationship" to an article of public interest. *Moreau v. New York Times Co.*, 15 Med. L. Rptr. 1623 (N.Y. Sup. Ct. 1988).

The use of a boy's photograph, without consent, in a book was not actionable because the public had an interest in the subject matter: a child's initiation into an education system through enrollment in a preschool program. *McWhir v. Krementz*, 15 Med. L. Rptr. 1367 (N.Y. Sup. Ct. 1987).

Footage of a wet T-shirt contestant on cable television was not misappropriation because coverage of the contest was news-

worthy and was not for trade or commercial purposes, even though the T-shirts featured a cigarette logo. *McCarville v. American Tobacco Co.*, 11 Med. L. Rptr. 2344 (N.Y. Sup. Ct. 1985).

A construction worker depicted holding hands with a coworker as part of a news broadcast about "Couples in Love in New York" had no misappropriation claim because romance is of public interest, and the man's appearance was only incidental. *DeGregorio v. CBS*, 473 N.Y.S.2d 922 (N.Y. Sup. Ct. 1984).

When a photograph of a celebrity "lookalike," who is an instantly recognizable public figure and who has not consented to the use of her likeness for promotional purposes, is published for commercial use in an advertisement, the celebrity has sufficient grounds for a misappropriation claim. *Onassis v. Christian Dior*, 472 N.Y.S.2d 254 (N.Y. Sup. Ct. 1984).

A female police officer depicted during a televison news segment about premenstrual syndrome had no misappropriation claim because the use was incidental and introduced a report of public interest. *Ryan v. ABC, Inc.*, 9 Med. L. Rptr. 2111 (N.Y. Sup. Ct. 1983).

Models who alleged that a photograph taken for their personal use was included without their consent in an article about how couples endure a woman's rape stated a misappropriation claim. *Mayers v. Michals*, 9 Med. L. Rptr. 1484 (N.Y. Sup. Ct. 1983).

A newspaper that published a photograph of men ogling a woman with an article about a feminist rally later republished the photograph to illustrate an article about psychological rape. The men had no misappropriation claim regarding the second article because the photograph depicted a precise activity discussed in a report of public interest. *Bourgeau v. New York News, Inc.*, 5 Med. L. Rptr. 1799 (N.Y. Sup. Ct. 1979).

The publication of a photograph of a murder suspect in a gubernatorial candidate's campaign commercial was not misappropriation because it was not published for trade purposes. *Davis v. Duryea*, 417 N.Y.S.2d 624 (N.Y. Sup. Ct. 1979).

Babe Ruth's heirs had no claim over the use of Ruth's likeness in a calendar because the statutory right to privacy does not survive death, and New York does not recognize a common-law right to privacy. *Pirone v. Macmillan Inc.*, 894 F.2d 579 (2d Cir. 1990).

A wrestling magazine stapled posters of wrestlers into the magazine. An appellate court asked the trial court to determine whether the poster photographs were included for trade purposes, or mainly for public interest purposes. The factors to be considered included the nature of the photos, their relationship to the magazine's contents, the ease with which they could be detached, their suitability as separate products, and how the posters were marketed. *Titan Sports Inc. v. Comics World Corp.*, 870 F.2d 85 (2d Cir. 1989).

Republication of a magazine cover in an advertisement for subscriptions was found to be an incidental use and not a misappropriation. *Lerman v. Flynt Distributing*, 789 F.2d 164 (2d Cir.), *cert. denied*, 479 U.S. 932 (1986).

A magazine incorrectly identified actress Jackie Collins Lerman as the woman in a nude photograph. Although the photograph was newsworthy, this privilege did not apply because the identification accompanying the photograph was false. Nonetheless, no recovery of damages was allowed because there was no evidence that the magazine knew the identification probably was false. *Lerman v. Flynt Distributing Co.*, 745 F.2d 123 (2d Cir. 1984), *cert. denied*, 471 U.S. 1054 (1985).

A court refused to dismiss a misappropriation claim filed by an actress against a sexually explicit cable program that edited her commercial for "crispbread" to make it appear she was engaging in sexual acts. Her false light claim was dismissed because false light is not recognized in New York. *Geary v. Goldstein*, 831 F. Supp. 269 (S.D.N.Y. 1993).

A woman allegedly depicted as a prostitute in the opening credits of the film *Sea of Love* had no misappropriation claim because her appearance was fleeting and incidental. The court also held that the mere publication of private, personal facts did not give rise to an intentional infliction of emotional distress claim. *Preston v. Martin Bregman Productions Inc.*, 19 Med. L. Rptr. 1057 (S.D.N.Y. 1991).

Hustler magazine was ordered to pay a woman $30,000 for publishing a nude photograph of her; the magazine recklessly disregarded the truth of an alleged consent form. The court also found private facts and false light violations, although New York does not recognize these causes of action. *Gallon v. Hustler Magazine Inc.*, 732 F. Supp. 322 (N.D.N.Y. 1990).

A court did not address Woody Allen's misappropriation claim regarding a lookalike model in an advertisement but instead enjoined further use of the advertisement under the Lanham Act because of likely consumer confusion. *Allen v. Men's World Outlet Inc.*, 679 F. Supp. 360 (S.D.N.Y. 1988).

An actress who appeared nude in a film did not have a misappropriation claim over a magazine's use of an image taken from the film because the image was newsworthy. *Ann-Margret v. High Society Magazine, Inc.*, 498 F. Supp. 401 (S.D.N.Y. 1980).

A classical guitarist was entitled to relief under the misappropriation statute when a record company put a picture of another man, dressed in a tuxedo jacket but without trousers, on his album jacket. *Jumez v. ABC Records, Inc.*, 3 Med. L. Rptr. 2324 (S.D.N.Y. 1978).

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NORTH CAROLINA

The North Carolina Supreme Court has rejected the private facts tort, noting the availability of the tort of intentional infliction of emotional distress. *Hall v. Salisbury Post*, 372 S.E.2d 711 (N.C. 1988). The court also rejected the false light tort. *Renwick v. News and Observer*, 312 S.E.2d 405 (N.C.), *cert. denied*, 469 U.S. 858 (1984). The state has recognized misappropriation, and intrusion was recognized as a cause of action recently.

Intrusion: In a case involving a hidden camera placed in a man's bedroom by his estranged wife, the North Carolina Court of Appeals recognized for the first time a cause of action for invasion of privacy by intrusion. Other North Carolina courts had discussed the intrusion cause of action, but none had explicitly recognized an intrusion claim. *Miller v. Brooks*, 472 S.E.2d 350 (N.C. Ct. App. 1996), *discretionary review denied*, 483 S.E.2d 172 (N.C. 1997).

A court denied a company's discovery request for audio and video materials obtained surreptitiously by *ABC*'s "Prime Time Live" program, noting First Amendment checks on injunctions to stop anticipated broadcasts. *Food Lion Inc. v. Capital Cities/ABC Inc.*, 20 Med. L. Rptr. 2263 (M.D.N.C. 1992).

Misappropriation: Even though a person consented to having his photograph and name used in an advertisement, when a photograph of someone else appeared in the advertisement with his name attached, he had grounds for a misappropriation claim. *Barr v. Southern Bell Tel. & Tel. Co.*, 185 S.E.2d 714 (N.C. Ct. App. 1972).

NORTH DAKOTA

North Dakota has not developed case law or legislation regarding invasion of privacy.

Airing a performer's entire act was a misappropriation.

OHIO

Ohio courts recognize invasion of privacy claims for intrusion, private facts, and misappropriation but not false light. *Yeager v. Local Union 20*, 453 N.E.2d 666 (Ohio 1983).

Intrusion: A news broadcast about children victimized by their parents' involvement with drugs included footage of a woman with her children at a drug raid. The woman, who alleged she was at the scene merely to pick up her children from their babysitter, stated claims for intrusion and defamation. *Rogers v. Buckel*, 615 N.E.2d 669 (Ohio Ct. App. 1992), *review denied*, 608 N.E.2d 1085 (Ohio 1993).

Filming a person in a public hallway outside a sheriff's office was not intrusion. *Haynik v. Zimlich*, 498 N.E.2d 1095 (Oh. Ct. Com. Pl. 1986).

ABC reporter Geraldo Rivera did not violate a then-existing state wiretap statute when he and a camera crew confronted a suspected "hit man." *Brooks v. American Broadcasting Co., Inc.*, 932 F.2d 495 (6th Cir. 1991).

A woman who was interviewed by Geraldo Rivera, who secretly filmed and recorded the interview, could not sue for violation of the federal wiretap law because a then-current provision barring taping for "injurious purpose" was unconstitutionally vague and would likely inhibit reporting. *Boddie v. American Broadcasting Co., Inc.*, 881 F.2d 267 (6th Cir. 1989), *cert. denied*, 493 U.S. 1028 (1990).

Private facts: Broadcasting videotape of an innocent person wrongly arrested at a bar during a drug raid did not disclose private facts because the raid was a matter of legitimate public concern. *Penwell v. Taft Broadcasting Co.*, 469 N.E.2d 1025 (Ohio Ct. App. 1984).

The publication of police officer Fred *E.* Powell's photograph in an article about substance abuse by officer Fred *A.* Powell was not a private fact because the photograph was a public record. *Powell v. Toledo Blade Co.*, 19 Med. L. Rptr. 1727 (Ohio Ct. Comm. Pls. 1991).

The publication of a photograph of three children and a policewoman fixing a flat bicycle tire, as part of a photograph spread that included nude pictures of the woman, did not disclose private facts about the children because the photo was taken on a public street while the children were in public view. *Jackson v. Playboy Enterprises*, 574 F. Supp. 10 (S.D. Ohio 1983).

False light: The publication of police officer Fred *E.* Powell's photo in an article about substance abuse by officer Fred *A.* Powell was not false light because the cause of action is not recognized in Ohio. *Powell v. Toledo Blade Co.*, 19 Med. L. Rptr. 1727 (Ohio Ct. C. P. 1991).

Misappropriation: The U.S. Supreme Court ruled that a news broadcast showing the entire 15-second act of a human cannonball violated his right to control publicity about himself. The Court emphasized that the entire act was shown, implying that it might not recognize a right to publicity claim for the use of something less than an entire act in a news program. *Zacchini v. Scripps-Howard Broadcasting Co.*, 433 U.S. 562 (1977).

Court ruled photo at track inoffensive.

A newspaper did not misappropriate the likeness of police officer Fred *E.* Powell in using his photograph to illustrate an article about substance abuse by officer Fred *A.* Powell; the photograph had no intrinsic value that the newspaper appropriated for its own benefit. *Powell v. Toledo Blade Co.*, 19 Med. L. Rptr. 1727 (Ohio Ct. C. P. 1991).

A magazine's incidental use of a man's wedding photograph in an article did not misappropriate anything of value beyond the value the man placed on his own likeness. *Lusby v. Cincinnati Monthly Publishing Corp.*, 904 F.2d 707, 17 Med. L. Rptr. 1962 (6th Cir. 1990).

The incidental use in a "20/20" program of the likeness of a suspected "hit man" did not support a misappropriation claim because the matter was of legitimate public concern. *Brooks v. American Broadcasting Cos., Inc.*, 737 F. Supp. 431 (N.D. Ohio 1990), *aff'd in part and vacated in part on other grounds*, 932 F.2d 495 (6th Cir. 1991).

OKLAHOMA

Oklahoma recognizes the four privacy torts. A statute makes misappropriation a misdemeanor. Okla. Stat. tit. 21, § 839. *See also* Okla. Stat. tit. 12, §§ 1448, 1449 (right of publicity).

False light: A man whose photograph was published and wrongly identified as that of a convicted murderer could not recover from the newspaper on a false light claim because he did not prove actual malice on the part of the newspaper. *Colbert v. World Publishing Co.*, 747 P.2d 286 (Okla. 1987).

OREGON

Oregon recognizes intrusion, false light, and misappropriation but has rejected the private facts tort. *Anderson v. Fisher Broadcasting Co.*, 712 P.2d 803 (Or. 1986).

Intrusion: The alleged trespass of a news crew during a police search of a home was not sufficient to mandate a finding of invasion of privacy; the jury properly considered other factors in determining that the crew's conduct was not highly offensive. *Magenis v. Fisher Broadcasting Inc.*, 798 P.2d 1106 (Or. Ct. App. 1990).

No intrusion occurred when the picture of a woman taken for a newspaper later appeared in a *Hustler* magazine article, which allegedly aimed to make readers look at the woman like they looked at nude models. *Ault v. Hustler Magazine Inc.*, 860 F.2d 877 (9th Cir. 1988), *cert. denied*, 489 U.S. 1080 (1989).

The publication of a photograph of a prisoner being booked at a jail is protected because law enforcement is a matter of public interest. *Huskey v. Dallas Chronicle*, 13 Med. L. Rptr. 1057 (D. Or. 1986).

Private facts: The television broadcast of film footage of an automobile accident victim in a spot advertisement for a special news report on emergency medical services was protected as newsworthy. *Anderson v. Fisher Broadcasting Co.*, 712 P.2d 803 (Or. 1986).

False light: The Oregon Supreme Court noted in a 1998 opinion that it had not previously recognized the false light invasion of privacy tort, but then refrained from deciding whether to do so because the statements before it, regarding a campaign against expansion of an airport, did not place a local stunt pilot in a false light. The state Supreme Court did note, however, that the Oregon Court of Appeals, an intermediate appellate court, has recognized false light claims for more than a decade. *Reesman v. Highfill*, 965 P.2d 1030 (Or. 1998).

The publication of a photograph of a visitor at an alcohol treatment center's open house to illustrate an article about the center may have implied that the visitor was a patient at the center. Therefore, the visitor had sufficient grounds for a false light claim. *Dean v. Guard Publishing Co.*, 744 P.2d 1296 (Or. Ct. App. 1987).

Where a photograph of a student accompanied an article that described the student as engaged in an "apparent drug transaction," the student could not have evidence of her drug use excluded from a trial on her false light claim. *Martinez v. Democrat-Herald*, 669 P.2d 818 (Or. Ct. App.), *petition denied*, 672 P.2d 1193 (Or. 1983).

Misappropriation: The use of videotape of an accident victim to promote a special news report was not misappropriation. *Anderson v. Fisher Broadcasting Co.*, 712 P.2d 803 (Or. 1986).

A picture of a student apparently engaged in a drug transaction that was included in a feature article did not give rise to a misappropriation claim. *Martinez v. Democrat-Herald*, 669 P.2d 818 (Or. Ct. App. 1983).

A man who challenged his consent to the use of his picture on a poster because he did not receive the promised compensation had no misappropriation claim, but he may have been entitled to modeling fee. *Castagna v. Western Graphics Corp.*, 590 P.2d 291 (Or. Ct. App. 1979).

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No misappropriation occurred when *Hustler* magazine used a woman's picture, not for commercial gain, but to accompany a newsworthy article about her anti-pornography efforts. *Ault v. Hustler Magazine Inc.*, 860 F.2d 877 (9th Cir. 1988).

PENNSYLVANIA

Pennsylvania recognizes the four privacy torts.

Intrusion: A prison official's grant of permission to a television news crew to film an inmate was not egregious enough to violate the inmate's constitutional right to privacy. *Jones/Seymour v. LeFebvre*, 19 Med. L. Rptr. 2064 (E.D. Pa. 1992).

When a tenant gave a television news crew permission to enter and film on rental property, the landlord had no grounds for a trespass claim, even if he had told the tenant not to allow the media on the premises. *Lal v. CBS*, 9 Med. L. Rptr. 1113 (E.D. Pa. 1982).

The publication of a photograph of people standing at an airline ticket counter beside boxes of merchandise, when used to illustrate a magazine article about the extensive purchases made by Latin Americans in Miami, was protected because the photograph was taken in a public place. *Fogel v. Forbes Inc.*, 500 F. Supp. 1081 (E.D. Pa. 1980).

Private facts: The publication of a photograph, along with the name, of a child abuse victim was not highly offensive, given that the man prosecuted for the abuse was a former police chief, and the media had a right to cover his prosecution. The allegation that a reporter had promised the victim confidentiality was irrelevant because one who discusses matters of public concern with the press does so at the risk that the material may be published. *Morgan v. Celender*, 780 F. Supp. 307 (W.D. Pa. 1992).

The publication of a nude photograph of a woman in a bathtub without her consent as a newspaper centerfold was not newsworthy. The court found reasonable grounds for a private facts claim. *McCabe v. Village Voice*, 550 F. Supp. 525 (E.D. Pa 1982).

The publication of a photograph of a football fan at a game with the zipper of his pants open did not disclose private facts because the fan was photographed in a public place for a newsworthy article on football. The court noted that the fan consented to being photographed. *Neff v. Time, Inc.*, 406 F. Supp. 858 (W.D. Pa. 1976).

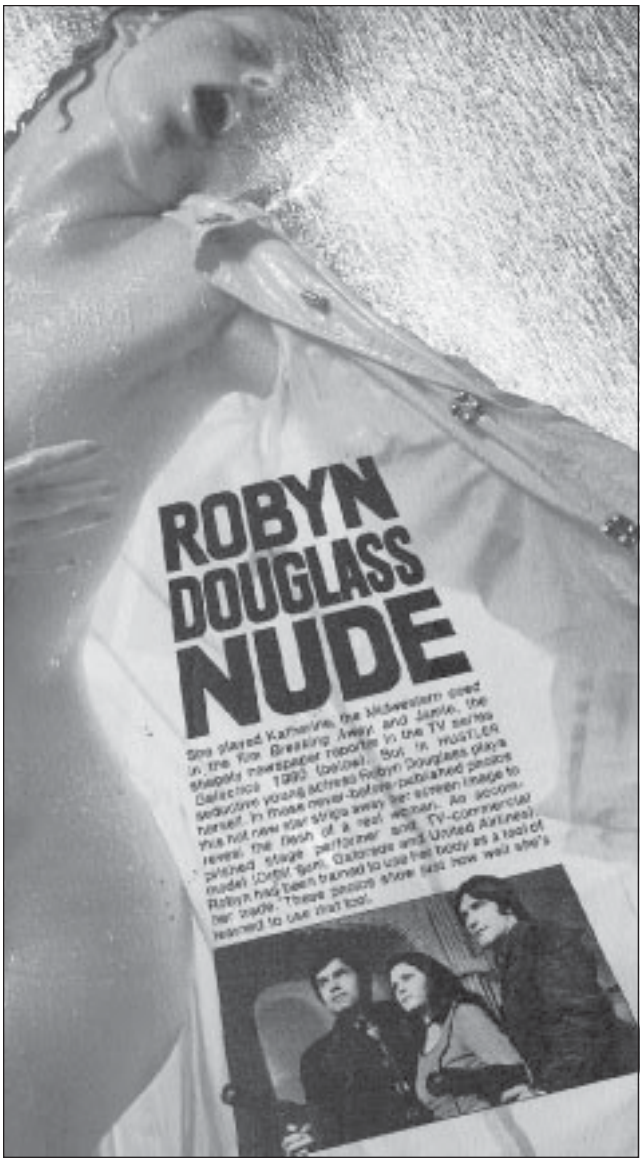
False light: The owner of a cleaning service called "Maids to Order" could not sue a television station for false light over a news feature that used the phrase "maid to order" and depicted scantily clad women about to clean a house. The reference did not relate to the owner, who also made no showing of knowledge of falsity or reckless disregard for the truth. *Kosor v. WPXI Inc.*, 21 Med. L. Rptr. 1956 (Pa. Ct. Comm. Pleas 1993).

A jury was entitled to decide whether the use of a man's photograph on a book cover placed him in a false light by linking him with the Antichrist. *Kennedy v. Ministries, Inc.*, 10 Med. L. Rptr. 2459 (E.D. Pa. 1984).

A magazine published a photograph of a person in a Mummer's costume at a parade with a caption that read, "A New Year's tribute here to all the ostriches who gave their tails to make the world free for closet transvestites from South Philly to get themselves stinking drunk." The court said the man in the costume had grounds for a false light claim because a reasonable person might find the caption offensive. *Martin v. Municipal Publications*, 510 F. Supp. 255 (E.D. Pa. 1981).

The publication of a photograph of people standing at an airline ticket counter beside boxes of merchandise, used to illustrate a magazine article about extensive purchases made by Latin Americans in Miami, did not portray the subjects in an offensive manner. *Fogel v. Forbes Inc.*, 500 F. Supp. 1081 (E.D. Pa 1980).

When television news editors spliced film segments together for a "shock effect" and made a hunter falsely appear to be shooting a goose that was not in flight, the hunter had grounds for a false light claim. The court said the splicing and inaccurate



Robyn Douglass won her suit against *Hustler* magazine.

portrayal would be sufficient evidence of actual malice. *Uhl v. CBS*, 476 F. Supp. 1134 (W.D. Pa. 1979).

Misappropriation: A model stated a claim for misappropriation against a non-profit group that used his picture to illustrate the cover of a book and in advertisements for the book. *Kennedy v. Ministries, Inc.*, 10 Med. L. Rptr. 2459 (E.D. Pa. 1984).

RHODE ISLAND

Rhode Island recognizes the four torts by statute. R.I. Gen. Laws §§ 9-1-28, 9-1-28.1.

Intrusion: A television reporter placed a phone call to a man who had taken his wife hostage, but had just released her, without informing the police or the man's family about the call. The man agreed to speak to the reporter and to the taping of the conversation, and he committed suicide shortly after excerpts from the telephone interview aired. The man's widow and estate could not support a claim for intrusion because the telephone interview revealed nothing that would not have been revealed irrespective of the interview. *Clift v. Narragansett Television*, 688 A.2d 805 (R.I. 1996).

False light: The publication in a sexually explicit magazine of a photograph of elementary school girls under a caption "Little Amazons Attack Boys" was not a false light invasion because the photo illustrated a wire service article about fighting among elementary school students. The court said the photo did not imply that the girls had consented to publication or had endorsed the magazine's editorial view. *Fudge v. Penthouse Int'l*, 840 F.2d 1012 (1st Cir. 1988).

Misappropriation: No cause of action existed for the initial, newsworthy publication of a picture of a sailor kissing a nurse in Times Square on V-J day. Subsequent publications and limited-edition sales had a commercial purpose apart from the dissemination of news, however, and the man who claimed to be the sailor stated a cause of action for misappropriation. *Mendonsa v. Time Inc.*, 678 F. Supp. 967 (D.R.I. 1988).

SOUTH CAROLINA

South Carolina courts have recognized intrusion, private facts, and false light claims but have not considered misappropriation.

Private facts: The sexual assault of a county jail inmate by another inmate was a matter of public significance. *Doe v. Berkeley Publishers*, 496 S.E.2d 636 (S.C. 1998), *cert. denied*, 119 S.Ct. 406 (1998).

The publication of photographs of six men arrested for beating a school teacher was protected as a matter of public interest. *Frith v. Associated Press*, 176 F. Supp. 671 (E.D.S.C. 1959).

False light: A magazine published a photograph of a group of people at a casino captioned, "High Rollers at the Monte Carlo club have dropped as much as $20,000 in a single night. The U.S. Department of Justice estimates that the Casino grosses $20 million a year, and that one-third is skimmed off for American Mafia 'families.' " The court said a man in the photo had grounds for a false light claim because the caption may have implied he was a high stakes gambler or member of the Mafia. *Holmes v. Curtis Publishing Co.*, 303 F. Supp. 522 (D.S.C. 1969).

SOUTH DAKOTA

The South Dakota Supreme Court recognizes a general cause of action for invasion of privacy, but has refrained from expressly accepting or rejecting the four traditional torts.

Intrusion: Supreme Court Justice Harry Blackmun stayed a preliminary injunction barring the broadcast of surreptitiously videotaped footage of a beef processing plant because he found the injunction was an invalid prior restraint. The trial court had held that the plant would likely succeed on trespass and other claims. *Federal Beef Processors v. CBS, Inc.*, Civ. No. 94-590 (N.D. Cir. Ct. Feb. 7, 1994), *injunction stayed*, *CBS, Inc. v. Davis*, 114 S.Ct. 912 (Blackmun, Circuit Justice 1994).

Private facts: The wife of a state senator, who also was the majority owner and president of one of their family businesses, was the subject of a newspaper article and a subsequent letter to the editor in response to the article that suggested her position with the family business was orchestrated to allow the business to qualify for government benefits as a minority or woman-owned business. Her and her husband's lawsuit for invasion of privacy over the letter to the editor failed because the couple were public figures engaged in activities of legitimate public concern. *Krueger v. Austad*, 545 N.W.2d 205 (S.D. 1996).

The publication of a photograph of a 69-year-old post office employee sorting mail, taken with the postmaster's permission, to illustrate an article on financial hardships of the elderly was protected because the federal government retirement age of 70 is a legitimate matter of public interest. *Truxes v. Kenco Enterprises Inc.*, 119 N.W.2d 914 (S.D. 1963).

TENNESSEE

Although Tennessee's courts have rejected most privacy claims, they have implicitly recognized the four torts. The state also has a misappropriation statute. Tenn. Code Ann. §§ 47-25-1101 *et seq.*

Private facts: A network was not liable for publicizing the fact that a woman was a

nude dancer because her activities were open to the public. *Puckett v. ABC Inc.*, 917 F.2d 1305, 18 Med. L. Rptr. 1429 (6th Cir. 1990).

False light: A nude dancer shown in a news program dancing at a club where drugs, sex, and contract murders were available did not state a false light claim because the dancer was accurately shown as a "nude female dancer in a seedy and crime-infested bar." *Puckett v. ABC Inc.*, 917 F.2d 1305, 18 Med. L. Rptr. 1429 (6th Cir. 1990).

Misappropriation: The merely incidental depiction of a nude dancer in a news report about crime in the club where she danced was not a commercial appropriation of her likeness. *Puckett v. ABC Inc.*, 917 F.2d 1305, 18 Med. L. Rptr. 1429 (6th Cir. 1990).

TEXAS

Texas recognizes the intrusion, private facts, and misappropriation torts. Texas does not recognize false light. *Cain v. Hearst Corp.*, No. D-4171 (Tex. June 22, 1994).

Intrusion: A television broadcast that showed footage of a private residence was protected because it was shot from a public street. *Wehling v. CBS*, 721 F.2d 506 (5th Cir. 1983).

Footage of an apartment building and an office building that was shown in a television broadcast did not amount to an intrusion because the footage only showed what could be viewed from a public street. *American Broadcasting Cos., Inc. v. Gill*, No. 04-97-00838-CV (Tex. Ct. App. Fourth Dist. June 16, 1999).

Private facts: A photograph from a high school soccer game that showed a player's genitalia was privileged under the First Amendment because the public event was newsworthy. *McNamara v. Freedom Newspapers Inc.*, 802 S.W.2d 901 (Tex. Ct. App. 1991).

A news broadcast that used the first name of a rape victim and a picture of the residence where she was attacked did not support an invasion of privacy claim because the broadcast — which questioned the guilt of the convicted rapist — was newsworthy. *Ross v. Midwest Communications Inc.*, 870 F.2d 271 (5th Cir.), *cert. denied*, 493 U.S. 935 (1989).

Certain nude photographs of children originally appeared, with parental consent, in *The Sex Atlas*, a book on human sexuality. Republication of those photos to illustrate a book review of *The Sex Atlas* in a sexually explicit magazine was protected. *Faloona v. Hustler Magazine, Inc.*, 607 F. Supp. 1341 (N.D. Tex. 1985), *aff'd*, 799 F.2d 1000 (5th Cir. 1986), *cert. denied*, 479 U.S. 1088 (1987).

Misappropriation: Anheuser-Busch did not misappropriate the name and likeness of a war hero in a documentary about Hispanic war heroes because the film was made not to boost sales, but as a public service. *Benavidez v. Anheuser-Busch Inc.*, 873 F.2d 102 (5th Cir. 1989).

UTAH

Utah has, at least implicitly, recognized the four privacy torts. *See Cox v. Hatch*, 761 P.2d 556 (Utah 1988).

Intrusion: The First Amendment barred an intrusion claim brought by a group of postal workers depicted with Sen. Orrin Hatch in a campaign flier. Their privacy interest was deemed minimal when the workers had permitted the picture to be taken in a public, or semi-public, area with a political candidate. The court held alternatively that the workers had no reasonable expectation of privacy when their photograph was taken in an open, common workplace, and they had consented to the photograph. *Cox v. Hatch*, 761 P.2d 556 (Utah 1988).

Private facts: The First Amendment barred a private facts claim brought by a group of postal workers pictured with Sen. Orrin Hatch in a campaign advertisement. The picture was taken in an open, common workplace and did not reveal private facts. *Cox v. Hatch*, 761 P.2d 556 (Utah 1988).

False light: The First Amendment barred the false light claim asserted by certain postal workers pictured with Sen. Orrin Hatch in a campaign advertisement. The implication of support for a ceratin candidate or membership in a political party would not be highly offensive to a reasonable person. *Cox v. Hatch*, 761 P.2d 556 (Utah 1988).

Misappropriation: The First Amendment barred an appropriation claim brought by a group of postal workers depicted with Sen. Orrin Hatch in a campaign flier. Their privacy interests were deemed minimal when the workers had permitted the picture to be taken in a public, or semi-public, place with a political candidate. The court held alternatively that the workers' endorsements had no intrinsic value, and their likenesses were merely incidental to the flier. *Cox v. Hatch*, 761 P.2d 556 (Utah 1988).

VERMONT

There is little privacy law in Vermont, although the Vermont Supreme Court has implied that the state would recognize the four torts.

VIRGINIA

Virginia recognizes only the misappropriation tort. Virginia Code § 8.01-40.

Intrusion: The publication of a photograph of a prisoner sleeping in his cell was protected from a claim for invasion of privacy under the federal Civil Rights Act because prisoners surrender most aspects of their right to privacy while incarcerated. *Jenkins v. Winchester*, 8 Med. L. Rptr. 1403 (W.D. Va. 1981).

WASHINGTON

The Washington Supreme Court has left open the question of whether false light's similarity to defamation, and the First Amendment protections implicated in defamation claims, precludes the recognition of the false light tort. *Eastwood v. Cascade Broadcasting Co.*, 722 P.2d 1295 (Wash. 1986).

Intrusion: Employees of a county medical examiner's office were accused of displaying autopsy photographs in a manner that invaded the privacy of the relatives of the deceased pictured. The state Supreme Court unanimously found that a common law right to privacy exists in Washington and that the autopsy photographs clearly were private, and also that the relatives had a protectable privacy interest in the autopsy photographs. *Reid v. Pierce County*, 961 P.2d 333 (Wash. 1998).

Filming a pharmacy interior from outside, through a window, was protected because the film was shot from a place open to the public. *Mark v. KING Broadcasting Co.*, 618 P.2d 512 (Wash. App. 1980), *aff'd*, 635 P.2d 1081 (Wash. 1981), *cert. denied*, 457 U.S. 1124 (1982).

A non-journalist who videotaped a demonstration won a declaratory judgment stating that a ban on recording oral communications did not apply to recording, with a readily visible device, conversations on a public street that are loud enough to be heard by others. *Fordyce v. City of Seattle*, No. C92-75WD (W.D. Wash. 1993).

WEST VIRGINIA

West Virginia recognizes the four privacy torts.

False light: The publication of a photograph of a female West Virginia miner that

was used to illustrate an article about harassment of female miners elsewhere implied that the miner pictured had been harassed and was sufficient grounds for a false light claim. *Crump v. Beckley Newspapers*, 320 S.E.2d 70 (W. Va. 1984).

WISCONSIN

By statute, Wisconsin recognizes causes of action for intrusion, private facts, and misappropriation but rejects false light. § 895.50 *Wis. Stats.*

Intrusion: A woman had no privacy claim against a television station that allegedly broke a promise by filming her as she rolled a marijuana cigarette. Because the woman had publicly admitted to using marijuana, the footage of her rolling the cigarette did not further damage her reputation. *Abertson v. TAK Communications Inc.*, 447 N.W.2d 539, 16 Med. L. Rptr. 2271 (Wis. Ct. App. 1989).

A television cameraman who entered a private home with the police and videotaped a search and arrest committed a trespass. *Stevens v. Television Wisconsin Inc.*, No. 85-CV3227 (Wis. Cir. Ct. 1987).

A photographer who entered a private home without permission and filmed an arrest in the home committed a trespass even though a police official invited the media along. *Heiser v. Waller*, No. 85-C-1454 (E.D. Wis. 1988).

Private facts: A teenager appeared on a talk show and attacked her stepmother's character, and the stepmother, who also appeared on the show, responded by reading to the studio audience a police report that described the teenager as having been "engaged in violent, abusive, indecent, profane, boisterous, unreasonably loud behavior," having "threatened to hit others," and having referred to herself as "the biggest gangster _____ in town." The broadcast of the reading of the police report was not a publication of private facts because the stepmother had a right to reply publicly to the teenager's public accusations, despite the existence of laws protecting juvenile police records from disclosure. In addition, the court found that the broadcaster was allowed to assert the stepmother's privilege regarding her right to reply to the accusations made against her. *Howell v. Tribune Entertainment Co.*, 106 F.3d 215 (7th Cir. 1997).

Identification of a person's religious affiliation by itself is not an invasion of privacy. *Briggs & Stratton Corp. v. National Catholic Reporter Publishing Co.*, 978 F. Supp 1195 (E.D. Wis. 1997).

WYOMING

Wyoming's courts have had little occasion to consider the privacy torts. In one defamation case, the U.S. Court of Appeals for the Tenth Circuit held that the same First Amendment considerations applied to defamation and false light claims. *Pring v. Penthouse Int'l Ltd.*, 695 F.2d 438 (10th Cir. 1982), *cert. denied*, 462 U.S. 1132 (1983).

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